

COUNCIL MEETING

MARCH 27, 2014

The Council Meeting of the Council of the County of Kaua'i was called to order by Council Chair Jay Furfaro, at the Council Chambers, 4396 Rice Street, Room 201, Līhu'e, Kaua'i, on Thursday, March 27, 2014 at 9:05 a.m.

Chair Furfaro: We have a very, very full calendar today and there is an order of business that is laid out for March 27th. It will be made available shortly at the podium. I do also want to say that it is laid out as such because we have visitors here from the Big Island, from O'ahu, and other parts of the State as it relates to travel. I also want to again say as our Rules point out, I will be keeping testimony today to an opportunity to speak for three (3) minutes. I will not automatically extend six (6) minutes for the purpose of how full the calendar is, and the calendar is unfortunately this full because tomorrow we actually start budget. So, many of the budget items will be given other time as well for public testimony. On that note, Mr. Clerk, I would like to call the meeting order with an understanding that at the roll call, we will acknowledge that Councilmember Kagawa will be here at 9:30 a.m. Roll call, please.

RICKY WATANABE, County Clerk:

Chair, approval of the agenda.

APPROVAL OF AGENDA.

Mr. Rapozo moved for approval of the agenda as circulated, seconded by Mr. Chock, and carried by a vote of 6:0:1 (*Mr. Kagawa was excused*).

The following members answered the call of the roll:

Honorable Tim Bynum
Honorable Mason K. Chock, Sr.
Honorable Gary L. Hooser
Honorable Ross Kagawa (*present at 9:18 a.m.*)
Honorable Mel Rapozo (*excused at 5:25 p.m.*)
Honorable JoAnn A. Yukimura
Honorable Jay Furfaro

Mr. Watanabe:

Six (6) present.

Chair Furfaro: Thank you. Before we called roll call, we already approved the agenda. So, I am sorry if you and I were not coordinated appropriately, but we can go to the public comment period.

PUBLIC COMMENT.

Pursuant to Council Rule 13(e), members of the public shall be allowed a total of eighteen (18) minutes on a first come, first served basis to speak on any agenda item. Each speaker shall be limited to three (3) minutes at the discretion of the Chair to discuss the agenda item and shall not be allowed additional time to speak during the meeting. This rule is designed to accommodate those who cannot be present throughout the meeting to speak when the agenda items are heard. After

the conclusion of the eighteen (18) minutes, other members of the public shall be allowed to speak pursuant to Council Rule 12(e).

Chair Furfaro: Thank you. Is there anyone in the audience that for time constraints, wants to testify now? Alice.

There being no objections, the rules were suspended to take public comment.

Chair Furfaro: Alice, would you announce what item on the agenda you wish to speak to before we start your time?

ALICE PARKER: Okay. Alice Parker, and I want to cover Executive Sessions and Special Counsel costs. I believe that we would be better served to have our County Attorney's Office handle these special issues that come up. We need some section in the Attorney's Office that can handle this. I talked to Al Castillo and he was in accord with this too. I mean, we are spending exorbitant amounts of money for Special Counsel time after time and if we had a section in the Attorney's Office, it would really save some money. Maybe they could not do the whole thing, but it would at least cut down some of the finances that we, the taxpayers, are burdened with when we have to hire these outside costs. Then the costs keep going up and up and up and I do not understand that. If there is a contract, there should be a specified amount and a specified amount of time to complete it. I think that the Council has asked for progress reports from now on. So, that would help. Anyway, that is my concern. Thank you.

Chair Furfaro: Is there anyone else that wishes to speak on any item at this time? If not, just for the general note, a format had been laid out, Alice, on September 6th for consideration of the County Attorney on the items you just talked about with a procedural recommendation and that will be discussed when we review the County Attorney's Office in budget, and budget starts tomorrow.

There being no further public comment, the meeting proceeded as follows:

Chair Furfaro: Let us go to Section (E), please, on the Minutes.

MINUTES of the following meetings of the Council:

February 12, 2014 Council Meeting
February 12, 2014 Public Hearing re: Bill No. 2520, Bill No. 2521, Bill No. 2522, Bill No. 2523, Bill No. 2524, Bill No. 2525, Bill No. 2526, Bill No. 2527, and Bill No. 2528

Mr. Chock moved to approve the Minutes as circulated, seconded by Ms. Yukimura, and carried by a vote of 6:0:1 (*Mr. Kagawa was excused*).

Mr. Watanabe: There are two (2) more meetings.

February 26, 2014 Special Council Meeting
February 26, 2014 Public Hearing re: Bill No. 2529

Chair Furfaro: Excuse me, Mr. Clerk, I think I read it and took the vote on the first two (2).

Mr. Watanabe: Yes, that was the last two (2).

Chair Furfaro: No, but I think I am exempt from one of those meetings. That is why I voted on the first two (2) and then I was going to acknowledge that I was not present to vote. So, if I could have the vote on the first two (2) items, February 12th, both items first, I would appreciate it.

Mr. Watanabe: So, the first approval we are taking is February 12, 2014 Council Meeting and the February 12, 2014 Public Hearing re: Bill No. 2520, Bill No. 2521, Bill No. 2522, Bill No. 2523, Bill No. 2524, Bill No. 2525, Bill No. 2526, Bill No. 2527, and Bill No. 2528. The second meeting is February 26, 2014 Special Council Meeting and February 26, 2014 Public Hearing re: Bill No. 2529.

Chair Furfaro: May we have a motion?

Ms. Yukimura moved to approve the Minutes of February 26, 2014 Special Council Meeting and February 26, 2014 Public Hearing re: Bill No. 2529 as circulated, seconded by Mr. Rapozo.

Chair Furfaro: I will not be voting to the Clerk. Further discussion?

The motion for approval of the minutes was then put, and carried by a vote of 6*:0:1 (*Mr. Kagawa was excused*). (**pursuant to Council Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Chair Furfaro is noted as voting silent but shall be recorded as an affirmative for the motion.*)

Chair Furfaro: Five (5) ayes. Let us go to the Consent Calendar, please.

Mr. Watanabe: I believe Councilmember Yukimura has a...

Ms. Yukimura: Yes. Mr. Chair, I want to ask that item number 3, C 2014-80 be taken separately.

Chair Furfaro: Okay. That is on the housing grants?

Ms. Yukimura: Yes.

Ms. Yukimura moved to remove C 2014-80 from the Consent Calendar, seconded by Mr. Rapozo.

Mr. Rapozo: For the process, we have a Resolution on that item, so we could have the discussion unless someone is here.

Ms. Yukimura: Yes. May I explain, Chair?

Chair Furfaro: You have the floor.

Ms. Yukimura: I just have a conflict of interest on one (1) of the items on the Resolution which is some allocation to the Boys & Girls Club. So, I was going to recuse myself from this communication and that is why I want to take it separately.

Chair Furfaro: Acceptable?

Mr. Rapozo: That is fine.

The motion to remove C 2014-80 from the Consent Calendar was then put, and carried by a vote of 6:0:1 (*Mr. Kagawa was excused*).

CONSENT CALENDAR:

C 2014-78 Communication (02/28/2014) from the Clerk of the Planning Commission, transmitting the Planning Commission's recommendation to amend Condition No. 19 of Ordinance No. PM-2004-370, as amended by Ordinance No. PM-2010-400, relating to the Kukui'ula Workforce Housing and Ordinance No. PM-2005-374 (*Kukui'ula Development Company (Hawai'i), LLC and Kaua'i County Housing Agency, Applicants*) (*Applicants' petition, Planning Director's Report and Supplement #1 to Planning Director's Report, on file in the County Clerk's Office.*): Mr. Rapozo moved to receive C 2014-78 for the record, seconded by Mr. Chock, and carried by a vote of 6:0:1 (*Mr. Kagawa was excused*).

C 2014-79 Communication (03/07/2014) from the Mayor, transmitting for Council consideration and confirmation, the following Mayoral appointees to the various Boards and Commissions for the County of Kaua'i:

1. Civil Service Commission
 - Nancy P. Golden – Term ending 12/31/2016
2. Liquor Control Commission
 - Paul N. Endo – Term ending 12/31/2016
3. Public Access, Open Space, and Natural Resources Preservation Fund Commission
 - Karen M. Ono – Term ending 12/31/2015
4. Salary Commission
 - Lenie F. P. Nishihira – Term ending 12/31/201

Mr. Rapozo moved to receive C 2014-79 for the record, seconded by Mr. Chock, and carried by a vote of 6:0:1 (*Mr. Kagawa was excused*).

C 2014-81 Communication (03/14/2014) from the Mayor, transmitting his Fiscal Year 2014-2015 Budget Message, along with the proposed Operating Budget, Capital Improvements Projects (CIP) Budget, and Schedule of Charges and Fees. (*Detailed Line Item Budget on file in the County Clerk's Office.*): Mr. Rapozo moved to receive C 2014-81 for the record, seconded by Mr. Chock, and carried by a vote of 6:0:1 (*Mr. Kagawa was excused*).

C 2014-82 Communication (03/14/2014) from the Director of Planning, transmitting for Council consideration, a Bill for an Ordinance to amend Chapter 8, Article 17, Kaua'i County Code 1987, as amended, relating to the Comprehensive Zoning Ordinance, to increase the fee charged by the Planning Department from

\$500 to \$750 for non-conforming use certificate fees charged as a part of the County's Transient Vacation Rental (TVR) program: Mr. Rapozo moved to receive C 2014-82 for the record, seconded by Mr. Chock, and carried by a vote of 6:0:1 (*Mr. Kagawa was excused*).

C 2014-83 Communication (03/14/2014) from the Director of Finance, transmitting for Council consideration, a Bill for an Ordinance to amend Chapter 6, Article 14, Kaua'i County Code 1987, as amended, relating to the Public Access, Open Space, and Natural Resources Preservation Fund to establish a floor of one-half percent (0.5%), as stated in the Kaua'i County Charter, and a ceiling of one and one-half percent (1.5%) of the annual certified Real Property Tax revenues appropriated to said Fund: Mr. Rapozo moved to receive C 2014-83 for the record, seconded by Mr. Chock, and carried by a vote of 6:0:1 (*Mr. Kagawa was excused*).

C 2014-84 Communication (03/14/2014) from the Director of Finance, transmitting for Council consideration, a Bill for an Ordinance to amend Section 21-9.2 of the Kaua'i County Code 1987, as amended, relating to Integrated Solid Waste Management, to increase the Solid Waste Tipping Fees imposed for business, commercial, and other nonresidential disposal fees: Mr. Rapozo moved to receive C 2014-84 for the record, seconded by Mr. Chock, and carried by a vote of 6:0:1 (*Mr. Kagawa was excused*).

C 2014-85 Communication (03/14/2014) from the Director of Finance, transmitting for Council consideration, a Bill for an Ordinance to amend Section 5-2.3 of the Kaua'i County Code 1987, as amended, relating to the Motor Vehicle Weight Tax, to increase the Motor Vehicle Weight Tax rates for both Passenger and Freight vehicles: Mr. Rapozo moved to receive C 2014-85 for the record, seconded by Mr. Chock, and carried by a vote of 6:0:1 (*Mr. Kagawa was excused*).

C 2014-86 Communication (03/14/2014) from Council Chair Furfaro, transmitting for Council consideration, a Resolution requesting that the State of Hawai'i and affected community members expand eradication and prevention efforts regarding Little Fire Ants: Mr. Rapozo moved to receive C 2014-86 for the record, seconded by Mr. Chock, and carried by a vote of 6:0:1 (*Mr. Kagawa was excused*).

Ms. Yukimura: So, Mr. Chair, I presume you will now be voting on C 2014-80, so I will leave the room.

COMMUNICATIONS:

(*Ms. Yukimura was recused from C 2014-80.*)

C 2014-80 Communication (03/10/2014) from the Housing Director, transmitting for Council consideration, a Resolution Authorizing the Filing of the Kaua'i County 2014 Action Plan (Community Development Block Grant) with the Department of Housing and Urban Development, United States of America, for a Grant Under Title I of the Housing and Community Development Act of 1974 and 1987 (Public Laws 93-383 and 100-242), As Amended: Mr. Rapozo moved to receive C 2014-80 for the record, seconded by Mr. Chock, and carried by a vote of 5:0:1:1 (*Ms. Yukimura was recused; Mr. Kagawa was excused*).

(*Ms. Yukimura was noted as present.*)

Chair Furfaro: I did not think you went far.

Mr. Watanabe: Council Chair, following the order of the day, we are on Resolution No. 2014-17 relating to Little Fire Ants (LFA).

Chair Furfaro: Page number?

Mr. Watanabe: Page 7.

There being no objections, Resolution No. 2014-17 was taken out of order.

RESOLUTION:

Resolution No. 2014-17 – RESOLUTION REQUESTING THAT THE STATE OF HAWAII AND AFFECTED COMMUNITY MEMBERS EXPAND ERADICATION AND PREVENTION EFFORTS REGARDING LITTLE FIRE ANTS: Mr. Bynum moved to adopt Resolution No. 2014-17, seconded by Mr. Chock.

Chair Furfaro: I have a motion to approve and a second. I am also delighted to let you folks know that we have Dr. Vanderwoude here from the Big Island. I want you to know that this Resolution introduced by myself, deals with the fact that these Fire Ants could be disastrous for the Hawai'i Islands as it relates to the economic consequences. We have an expert to talk to us and make a short presentation, but as many of you know, I was a student exchange in French Polynesia and had lived in Tahiti for a number of years, and we have Fire Ants that have exploded in the districts of Papenoo and Papara in French Polynesia to the point that farmers are actually abandoning the working of the fields. It is that drastic. So, on that note, I will ask Dr. Vanderwoude to come up and chat with us, and then we will open for public testimony. Please.

There being no objections, the rules were suspended.

DR. CASPER VANDERWOUDE, Research Manager, Hawai'i Ant Lab: Thank you, Mr. Chair and Councilmembers. Thank you for inviting me. My name is Casper Vanderwoude. I manage the Hawai'i Ant Lab which is based in Hilo. We are funded jointly by the State Department of Agriculture (DOA) and the Hawai'i Invasive Species Council (HISC), along with some other grant bodies depending from time to time, depending on which grants that we are actually working on.

(Mr. Kagawa was noted as present.)

Chair Furfaro: May I have the staff put a slide up that shows the Big Island as well as Maui and Kaua'i who may have these colonies so that when you talk about the Big Island situation and so forth, we can be very geographically specific of where the problem exists?

Dr. Vanderwoude: Certainly.

Chair Furfaro: Okay. Go right ahead.

Dr. Vanderwoude: Right. This shows the three (3) main islands that we know have Little Fire Ants. The Big Island is most definitely the worst affected at the moment and in an area between Kalapana and Laupahoehoe up to

an elevation of about two thousand five hundred feet (2,500), proportional significant number of properties have Little Fire Ants. They have also been discovered near Kona and in isolated patches between Kailua, Kona and Captain Cook, and also in Na'alehu, which is the southernmost point. There is a single infestation on the island of Kaua'i, the Kalihiwai Bay, and we have one (1) infestation currently on Maui near Waihe'e. Both of those are being under active eradication. So, we are trying to eradicate those smaller infestations on the Neighbor Islands. More recently, there have been a few discoveries of Little Fire Ants on the island of O'ahu was well that are associated with the export of some infested *hupu'u* logs from the Big Island over to Honolulu. I am guessing you would like me to talk mostly about what we are doing on this island?

Chair Furfaro: Yes, and actually, we had a short discussion about the detection and the collection process if someone discovers it, which was using peanut butter to attract the ants onto a popsicle stick, then putting the popsicle stick a plastic bag and having it frozen and sent to the State so you can determine if this is the right ant or Little Fire Ant or something to that effect. Could you confirm that or give us the right information as to what the procedure is?

Dr. Vanderwoude: Yes, I can. For people who have not experienced Little Fire Ants, they are probably thinking that this has much to do about nothing, it is just another ant. Talk to some people that have been living with this species and you will soon realize that it is a terrible thing to have in your home, on your property, on your farm or anywhere else.

Chair Furfaro: Eddie, could you – excuse me, Doctor. Could you check his microphone to see if it is on? It is on?

Dr. Vanderwoude: Would you like me to pull it a little bit closer?

Chair Furfaro: Maybe you could pull it a little closer. There we go.

Dr. Vanderwoude: I am just too tall for this thing. So, early detection gives us a chance to eradicate Little Fire Ants before they become established. Once an infestation covers spans more than a few acres, it is very, very difficult to eradicate and certainly very expensive. So, our best weapon in the fight to prevent this species from spreading is finding them before they become established. So, we ask all people to be aware of the problem, be aware that Little Fire Ants are spreading, and if they can, to self-diagnose or self-survey their properties. It is extremely easy. You simply use a chopstick or a popsicle stick and smear a very small amount of peanut butter on it, leave a few of those in shady places around your property where you think you might have Little Fire Ants. If you do collect ants, pop that stick into a small ziplock bag and freeze it overnight, and then they can be sent either directly to our lab or to the Department of Agriculture here in Lihu'e or to the Kaua'i Invasive Species Committee (KISC) base yard as well. So, there are options as to where they can be sent.

Chair Furfaro: It is confirmed that right at present, Maui and Kaua'i each only have one (1) location where they have been confirmed to be present?

Dr. Vanderwoude: That is correct. I know that Kaua'i Invasive Species Committee have done a lot of surveying throughout the island and as far as we know, it is only present near Kalihiwai Bay and we have been working for some years to try to eradicate that. We are actually doing very well. We started in earnest, about two (2) years ago, two and a half (2½) years ago, where at that time it covered about twelve (12) acres, three (3) properties between the bay and the Kīlauea Wildlife Refuge. At the moment, we have it pretty much pinned to the cliffs of the bay. So, we have actually managed to pretty much eradicate it from about ten (10) of those twelve (12) acres. So, now the most challenging part is lift, which is to free our people to climb down the cliff on ropes and spray those last few colonies that are actually quite isolated and difficult to reach. That phase of the project starts the week after next. We will be working with the company called Climb Aloha, KISC, and our people will be working together to start that particular project.

Chair Furfaro: We have a representative here from KISC today as well, and we will be calling him up next to talk about how that technique is used. On a recent visit that I had on the Big Island, I was surprised that in an area by Keaukaha. There were actually some ants in the trees?

Dr. Vanderwoude: Yes, that is correct.

Chair Furfaro: They were on the beach as well.

Dr. Vanderwoude: One of the problems with this species is that it does make nests in trees as well as on the ground and most of the nuisance ants or pest ants that we have had to deal with worldwide tend to live on the ground only. So, it makes the job very difficult. It meant that we had to develop special tools and different ways of dealing with this particular problem. We are currently working with the County of Hawai'i, Richards and Speech, and the Pana'ewa Zoo using funds provided to us by the Hawai'i Tourism Authority to develop management protocols for public use areas. This is going to be an increasing problem for the County of Hawai'i as more and more public areas become infested. So, we are working to develop effective and efficient management programs to deal with that from a County perspective. One of the outputs of that will be a Best Practices Manual which would be useful to other Counties should this particular pest spread.

Chair Furfaro: Did I just hear you mention Pana'ewa as having a colony?

Dr. Vanderwoude: Yes. The area around Pana'ewa is quite badly infested as is the zoo, which is kind of central.

Chair Furfaro: That is the zoo. May I ask the KISC representative to come up and join you on the microphone and we can turn the second microphone on? Maybe you can give us a little bit of an update on the Kalihiwai infestation and how we are currently working on what you said is left on the side of the *pali* there, on the cliff, and what are the arrangements with the treatment of that, either of you gentlemen.

Dr. Vanderwoude: I think I can take that. KISC has been most of the work. We have been trying to coordinate and develop the techniques that are being used. So, most of the heavy lifting is being done by KISC. I would like to

acknowledge the assistance County as well. They have been very helpful with signage and helping to manage access to the infested areas as well because part of that site has a public trail through it that has been quite problematic. We have used a combination of treatments there. We have used standard granular baits which we can spread on the ground and then we have developed a gel bait which we are able to shoot up into the trees. Most of the baits that are available commercially are in this granular form which makes them very difficult to apply to vegetation. So, we have developed a different bait that is in a more liquid or paste form that we can apply directly to the trees and deal with those nests that are up beyond our reach.

Chair Furfaro:
this time?

Would you like to add anything to that at

RAYMOND KAHANAUELE, Field Operations Supervisor for the Kaua'i Invasive Species Committee: For the record, my name is Ray Kahaunaale. I am the Field Operations Supervisor for the Kaua'i Invasive Species Committee. We work under the direction of Casp, Hawai'i Ant Lab, and also with the Department of Agriculture with Craig Kaneshige. We pretty much have it contained into a certain area on a couple of properties. Like he said, the most difficult part would be on the cliff side, getting to those colonies there. We are going to actually do it in a couple of weeks. We have people coming down to take care of that.

Chair Furfaro: So, what is the follow-up after the treatment? Do you wait a couple weeks and then you re-inspect it?

Dr. Vanderwoude: What we do is we treat about every six (6) weeks for twelve (12) months. The problem with trying to control ants is no one (1) single application of the baits we use will be enough. To give you an idea, in a badly infested area every square foot of land will have as many as two thousand (2,000) ants living on that one (1) square foot. So, multiply that across a house lot, which is ten thousand (10,000) square feet, that is a lot of ants and a single application of pesticide will only manage to deal with a portion of those. So, what we do is we treat and then we treat again, and we treat again, and we keep on treating until we cannot find any ants and then we continue treating again afterwards just to make sure we got those last few. Once that phase of the project is complete, we then monitor that site very carefully for three (3) years afterwards to make absolutely certain that we have not missed that last colony. It is very intensive and it requires a lot of political will and perseverance. Certainly, Craig Kaneshige from the Department of Agriculture and my colleagues at KISC have been working on this for many years and it is really to their credit that we do not have this problem spread throughout this particular island, that they have managed to contain it during a period when we did not have the technology to deal with it. Once we have developed those new techniques, we were able then to go back to that site that have been effectively corralled by Department of Agriculture and KISC and start this treatment process.

Chair Furfaro: Gentlemen, I am going to ask the members if they have questions now. If you do not mind, I am going to open up the floor. Questions after this update? JoAnn.

Ms. Yukimura: Yes. I first want to thank both of you and the teams you work with for especially KISC with respect to the Coqui frogs. That

was remarkable success in eradication and the Council as you know, helped to fund the effort because we realized how critical it was at that point in time. I am grateful to the Chair for introducing this Resolution to bring attention to the problem. My questions are, you are talking about treatment and eradication, how do we do prevention and what can the community, both individually and collectively, do to stop the ants from even entering our island?

Dr. Vanderwoude: That is a very good question and there is no doubt that prevention is the best approach to invasive species. Dealing with them once they have become established is sometimes hideously expensive. So, prevention really should be the main arm of any strategy to deal with invasive species. With Little Fire Ants clearly, the easiest way that they can be transported from location to location is in things like potted plants. They can be nesting in the plants themselves, but more often in the potting medium and because of their tiny size, they can go undetected. Fortunately, the State Department of Agriculture Plant Quarantine Branch regulates the movement of potted plants between islands. So, any nursery that wishes to export plants from say, the Big Island to this island, would require either to have a certified nursery where the nursery is inspected regularly by the Department to ensure it is free of pests or each individual shipment will be inspected by Plant Quarantine Officers. So, that pathway of movement of potted plants is clearly the most important pathway. There are other pathways as well and that can be people generally carrying potted plants or orchids or cut flowers or foliage with them when they travel by plane. Many people do in fact have those items inspected by DOA before they fly, but other people do not. So, that is a risk. The movement of any agricultural or landscaping commodities like cinder, *hupu'u* logs, and landscaping material can also be a risk. So, we are looking how we can address that and certainly the main shipper here in the State, Young Brothers, Limited, are very anxious to facilitate the prevention strategies that we would like to see put in place. So, that leaves smaller things, the lower probability pathways which are people generally moving things that may be infested whether it is household goods or personal items. So, being able to raise awareness of the issue with people generally is a very good strategy to try to cope with those lower risk pathways.

Ms. Yukimura: So, if people's awareness is really important can you...I think the people of Kaua'i do not fully understand how horrible it is and the kinds of problems that arise when there are Little Fire Ants. Can you perhaps explain, both of you or either of you, explain this in some detail? I mean, your brochure talks about how pets are affected and how cats and dog pets, can be basically attacked by ants. I am assuming humans will be greatly affected. I have heard that farm workers are very much affected. Can you tell us about this?

Dr. Vanderwoude: Yes. The impacts of LFA are quite far reaching. Just to focus on pets and domestic animals, Little Fire Ants will get caught up in the fur or the feathers of domestic animals and pets. Invariably some of those ants will end up around the face and it is highly likely that those ants will end up being caught on the animal's eyes and at that point when the animal blinks, the ants become alarmed and start to sting. Those stings become an entry point for micro-bacteria into the cornea of the eye and that causes progressive blinding of those animals. That condition is known as Tropical Keratopathy. A little thought, where there are Little Fire Ants, Tropical Keratopathy is very common. So, it is a very common sighting in infested areas in Hilo and Puna to see animals that are either completely or partially blinded. Elsewhere in the State it is quite rare. I do

not know if you have seen animals with cloudy eyes, whether you see that normally, but in Hilo and surrounding areas, a major portion of domestic pets look like that.

Ms. Yukimura: What about people?

Dr. Vanderwoude: Well, Little Fire Ants sting people too. They are not particularly aggressive, but they get trapped in people's clothing especially the ones that are living in trees. It is very easy for them to fall out of the tree. So, if you are living in an area with Little Fire Ants, you will be subject to a constant rain of them falling out of the vegetation. Different people react differently, but in extreme cases they cause quite a painful, almost an anaphylactic reaction. I have a friend of mine that actually starts to get short of breath and gets extremely unwell.

Ms. Yukimura: You have a picture of the banana trees. So, I imagine the farm workers who harvest banana trees are affected by this.

Dr. Vanderwoude: Yes, they are. I can speak from personal experience. I was stupid enough to harvest some bananas from a tree that I knew to be infested and I did not think about it. Every time I tried to take the bunch off with my machete, I would get this rain of ants coming down on me and I ended up getting quite badly stung. Most tropical fruit tree and plant species are ideal habitats for Little Fire Ants. So, mango, avocado, papaya, rambutan, mangosteen, all of the crops that are quite common here, and bananas are at the top of that list, are places where LFA really like to live.

Ms. Yukimura: I mean, it is certainly something we do not want on our island. So, if people find what they think might be these Little Fire Ants, what should they do?

Dr. Vanderwoude: Well, they have a number of options. I described how it is fairly easy to collect samples, but if you believe that you do have Little Fire Ants or you see a very small ant that you have not seen before, please call either the Department of Agriculture here in Līhu'e or call KISC and I am sure that somebody from one of those offices would be more than happy to come out and do a survey of the property.

Ms. Yukimura: I know that KISC responds very well.

Mr. Kahaunaele: Yes, we usually respond to people complaining about ant bites and then we will go and do a survey, whatever we think, we will send to the Department of Agriculture to identify if it is or not LFA.

Ms. Yukimura: And your number is easily found in the phonebook?

Mr. Kahaunaele: Yes, and we do have web information.

Ms. Yukimura: Website.

Mr. Kahaunaele: Yes.

Ms. Yukimura: So, K-I-S-C, right?

Mr. Kahaunaele: Correct.

Ms. Yukimura: Kaua'i Invasive Species Committee, and is that your website? Well, you can just...

Mr. Kahaunaele: Yes, and then we do a lot of outreach year round, County Farm Bureau Fair, Garden Fair, and we always have information there for people.

Ms. Yukimura: Okay. Last question, our Parks Director said that there was an infestation at Salt Pond. Was that checked out?

Mr. Kahaunaele: No. We are going to do it sometime this month. Because of the rain, we cannot. When it rains, they do not really move around so it is useless to do the survey.

Ms. Yukimura: Okay.

Mr. Kahaunaele: So, I will have it on the schedule for this month sometime. I will let Lenny and everybody know.

Ms. Yukimura: Alright. Thank you.

Chair Furfaro: Other members, questions? Go ahead, Mr. Kagawa.

Mr. Kagawa: First of all, I want to thank you folks for the work that you do. I think we do not have the big problem like O'ahu yet, but that is why I think it is important. I thank the Chair for putting it on the agenda and getting community awareness. I mean, I was not aware that the ants were this small. I have been bitten by Red Ants before on O'ahu and it was at the soccer field in Waipi'o. It was red and it was very painful, but it was bigger than this. So, it was not the Little Fire Ants that bit me in Waipi'o?

Dr. Vanderwoude: No. There is a species that most people here call "Red Ant" which is a species of *solenopsis* that has been here since World War II. They are much larger and they tend to live in open spaces like soccer fields, sporting areas, and golf courses. Little Fire Ants prefer shady areas, areas where there is not so much sun. So, that is most of our islands because we have pretty lush vegetation here.

Mr. Kagawa: Okay. I guess my second question is, there are popular ant baits that are very effective that homeowners use, right, that Terro brand? For me, I am basically clueless about pests. My wife is the pest control person. So, I really should take more interest. How do those types of baits work? They work well on the black ants. They do not work these types?

Dr. Vanderwoude: Different baits work better for different species. We have a website, the Hawai'i Ant Lab has a website called LittleFireAnts.com and you can download information sheets and guides on dealing with invasive ant species. They are quite detailed and we provide lists of the baits and other chemicals that can be purchased here in Hawai'i. We try to point out which ones are better for different situations on those manuals that you can download.

Mr. Kagawa: Is the theory that same, that they will take the bait, bring it back to the nest...I guess to the Queen?

Mr. Kahaunaele: Yes, some baits work that way and some baits are just when they eat it, they die.

Mr. Kagawa: When they eat them, they will die?

Mr. Kahaunaele: Yes.

Mr. Kagawa: Okay.

Mr. Kahaunaele: Actually, you would want something that would take it back to the nest, but then again, if you continue treating you want to vary your treatments, maybe try something else because once they get used to one thing, the population will stay. So, if you can change around your...

Mr. Kagawa: Change around the baits.

Mr. Kahaunaele: Yes.

Mr. Kagawa: Just like fishing.

Mr. Kahaunaele: Yes.

Mr. Kagawa: Okay. Well, is it fair to say that for the red fire ants, we are still experimenting what works well?

Mr. Kahaunaele: No.

Mr. Kagawa: We kind of know what bait works well? Because I know one time I had a huge ant problem one time and that is the only time I took interest. So, I went to the University of Hawai'i (UH) Agriculture store in the industrial area and I bought the most expensive one they had because I thought it would work well and it smelled really bad. It smelled like dead fish or something, but it was quite huge, the pieces of bait.

Mr. Kahaunaele: Granules.

Mr. Kagawa: Yes, but it was not effective. I mean it did not really help, except my dog kept eating it. It is a true story though. My dog ate it because it had a strong smell. I did not see the reduction in the ants though with that expensive one that I bought. That UH person told me that is the best one we have, but it did not work.

Dr. Vanderwoude: It is exactly like fishing. Different species are attracted to different kinds of baits. To give you an example, my father-in-law and I would go fishing in Australia and we both use different kinds of baits. We would stand beside each other in the water at the beach and at the end of the afternoon, he would have a bag full of one species of fish and I would have a bag full of other species of fish just because we are using different baits. So, it is very important to know which one to use for which situation.

Mr. Kagawa: Well, I guess my final request is that when we do find what recipe works, maybe we can have it come back on the Council because one million (1,000,000) people like Mel said, watch this right here. So, we can educate and if people have not, maybe they can call you folks and help deal with it because it seems like once it spreads, you are pretty much...I mean I seen the news, some of the reports from O'ahu, and once it spreads it is pretty hard to control. Thank you for your work.

Chair Furfaro:

Mr. Rapozo, you have the floor.

Mr. Rapozo:
What do you folks use to kill it?

Thank you, and thank you for being here.

Dr. Vanderwoude: There are number of granular baits that we use and we look for the ones that are most effective and are the least toxic. The baits we use for the aerial ant, the ants that live in vegetation, is a recipe that I have developed over the past ten (10) years or so that seems to be very attractive to Little Fire Ants. Here on Kaua'i, we use an active ingredient in that bait called methoprene, which is one of the safest pesticides available anywhere. It is a very slow acting active ingredient, but it does work very effectively.

Mr. Rapozo: Like Ross, at the house I use Andros which is a granular. I do not know if the camera can get this. Can you get this? I do not know if you can get that close, but it is small. It looks like it is almost like...you can see it in comparison to my hand. It is like little *'ukus*, small little. I do not know how you find this thing, but would something like Andros work on this?

Dr. Vanderwoude: Andros is a good bait. We use a generic version of it, which is available at the chemical supply stores as well. Effective treatment is a combination of the right product, but also the right application with it.

Mr. Rapozo:

Right.

Dr. Vanderwoude: It can be very easy to make some small changes in how you apply those baits to have a big difference in the impact that it has on the ants.

Mr. Rapozo:
Ants, like Ross said, was this small.

Because I had no clue that the Little Fire

Dr. Vanderwoude:

There are no smaller ants in Hawai'i.

Mr. Rapozo:

There are no smaller?

Mr. Kahaunaele:

Yes, that is the smallest ant.

Dr. Vanderwoude: There are two (2) or three (3) species that are about the same size, but you will not see a smaller ant anywhere in the State.

Mr. Rapozo:

Thank you.

Chair Furfaro:

Mr. Chock.

Mr. Chock: Thank you. I am so thankful that at least on Kaua'i, we have confined it to Kalihiwai at this point. Also, what I took from what you had to say was that prevention is the most important and that we have a process to go through certified quarantine. Can you share anymore about what the biggest need there is because I have heard some stories about orchids coming from Hilo and then all of sudden in the backyard you hear the Coqui Frog chirping away at night? So, I know that is how they are coming. Is there any specific area that we need to pay attention to? Is it more inspection or tighter restrictions on that? If you can share anymore on that, that would be great.

Dr. Vanderwoude: I cannot testify as to what the Department of Agriculture needs or what the Department believes should be done. It is really for the DOA to talk about. I would just tell people moving from island to island, whether they are flying or by other means, if you are transporting things like potted plants or orchids, to just be really, really careful. If you want to bring them into the DOA office before you fly, they will inspect them for you and that is what I would recommend that people do.

Mr. Chock: Thank you.

Chair Furfaro: Well, one of the reasons I put this on so early is when this Resolution and should it pass, we will send that with our Council Services to the State Legislature right now because earlier we had sent a Money Bill to them asking them to reinstate those vacant positions in the Agriculture Department so that they can have the inspections that are required, especially importing of *hapu'u* from the Big Island and so forth is my understanding how the any actually got towards the North Shore. It was transferred in some *hapu'u*. Without the appropriate staffing at the State Agriculture Department, it is very difficult. So, the intent of this Resolution is to go with our testimony about re-staffing these positions. Anymore questions folks before I ask for public testimony? Gentlemen, we really appreciate both of you being here and we are going to be required from our Rules to take public testimony. Public testimony for today, I am going to leave with only three (3) minutes because we have such a full agenda. We are trying to get through items before our budget meetings tomorrow. Thank you so much. If you have any extra materials, please leave it with our staff, business cards, anything. Thank you. Public testimony? Mr. Mickens.

GLENN MICKENS: Thank you, Jay. For the record, Glenn Mickens. I just have a question. I also appreciate the work these gentlemen are doing to eradicate this problem. I am just wondering whether these exterminating people on Kaua'i, if they are familiar with this. I know like Ross, my wife handles the bug situation, but we have an eradication service that comes around about every two (2) weeks or we will call them sooner. Are they familiar with these types of ants? I mean familiar enough that they now how to handle them because I did not really hear the solution as Ross was asking. I did not really hear the main thing that you kill these particular things with. I have never seen this ant. I would not know it if I did see it. So, I just wondered if the people here, the eradication people, are familiar with this. That is all. I do not know whether they can answer it or not. Thank you, Jay.

Chair Furfaro: Thank you. Is there anyone else that wants to speak?

JOE ROSA: Good morning members of the Council. For the record, Joe Rosa. When I moved into my new home in the 1960s I had an infestation and I do not know where those fleas came from because I did not have any cats, no dogs, but I had an infestation in my garage. Fortunately, my garage is separated from the house. So, in my knowledge what I learned in grammar school, there was an old pesticide that maybe you people have not heard about. The old Black Leaf 40. It is a nicotine substance pesticide and I remember that in my school days. When the chickens used to have lice on them, they said either take sulfur and dust them under their wings and by their tail or on the pens. You could get Black Leaf 40 nicotine spray, spray all of the footing of the pens, take the chickens out, spray on the footing on the pens there, and get rid of the lice. So, I did the same thing in my garage for the fleas. I sprayed it all with the Black Leaf 40 on the baseboards between the wall and the baseboard thing, and I got rid of the fleas, ants, and anything else. So, I thought about using it on my house on the baseboards. Maybe Mel could see if they still have Black Leaf 40 in the stores and spray the footing of their homes and the pipes that goes into the house, just spray it with Black Leaf 40. I sort of solved the ant problem in my house. It is a highly deadly pesticide because on the bottle it says, "Black Leaf 40" and you see the crossbones over there of the skeleton signifying it is poisonous. Some of those old things do work. So, instead of only coming here and telling the people put peanut butter with a stick, they should have already have looked into some pesticides to get rid of this here for the homeowners. Do not wait to check to see if it was the Little Fire Ants. Get rid of it. Get rid of the source immediately. Not dilly dally like a lot of the things here. Kaua'i is a forgotten island and they say, "We will get to you" and then it is going to take maybe a week or two (2) before...

Mr. Watanabe: Three (3) minutes.

Mr. Rosa: ...before they get here. That is the policy. I know the infrastructure, the way the things work on this island. Kaua'i...

Chair Furfaro: Thank you, Joe. The (3) minutes are up.

Mr. Rosa: Yes. It is the forgotten island. So, they should do something. Look at California when they had the fruit flies. They sprayed it right away and they got rid of it. In the State of Hawai'i, they wait until it is too late. So, think about it. Get the State people to get it done before it becomes a problem. They wait too long.

Chair Furfaro: Thank you, Joe.

Mr. Rosa: Thank you.

Chair Furfaro: Is there anyone else in the audience that wants to give testimony?

L'HOTE YOSHITO: *Aloha kakahiaka.* My name is L'Hote Yoshito and I happen to live right above the Little Fire Ants in Kalihiwai. They rain on you when you walk through the trail. It is a real problem. It has been identified and it has been the same for a long time. So, what I want to communicate to everybody is, how can the community help, how can maybe exterminators come and apply some of the poison that you folks would recommend? But I feel like we need to kill the ants as fast as we can when they identify it and how can we speed up the process? I want to let you folks know that Kilauea is ready to help in that

manner because we are the only zone that has them and we want to get rid of them. *Mahalo.*

Chair Furfaro: Is there anyone else that would like to testify?

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Chair Furfaro: Again, for the members, some of you know that my family's *kuleana* is right in that area at Puhukamu and certainly concerned that we address this with help from KISC and the State. I want to thank the specialist for responding to my request from Hilo to come over, but what I am hoping that we can do here while the Legislature is still in session is deal with the general state, having a copy of the Resolution going to them, making them aware of how important it is for us to address this as we did, JoAnn mentioned with the Coqui frog in advance. It took us three (3) years, but we are generally Coqui frog free here, that it is a way to solicit the State to support their staffing, and the educational purpose that we want with residents on Kaua'i as to what techniques and what process to go. That is the intent of the Resolution. JoAnn, let me give you the floor.

Ms. Yukimura: Chair, thank you. I was just wondering if Dr. Vanderwoude would like to respond to the public testimony in any way, especially, the question on Kalihiwai on how a community could help. Is that alright, Chair?

Chair Furfaro: Yes, fine. I think that was excellent. I was going to turn my file over to the gentlemen that gave testimony.

There being no objections, the rules were suspended.

Chair Furfaro: In particular, the question is posed to you from Councilmember Yukimura. Is there any greater vehicle that we can do to help this specific community in Kalihiwai?

Dr. Vanderwoude: Thank you, Mr. Chair. I have been working in that little area for about five (5) years now. The first few years we were really still doing research to find methods that worked. We have those now. Then we really need to first of all engage the property owners. There are three (3) property owners that were all affected, and then we had some regulatory hurdles that we had to go through. We have been treating there now for about I think, two and a half (2½) years. Most of that area is now free of Little Fire Ants. We have a couple of little hot spots, which are very small and the cliff areas, which would be to the west of the second trail, the one that runs along the cliff line. So, that is our next step now, is to deal with those ants at the very edge of the infestation, but I am quite hopeful that we can eradicate it. Thanks in large part to the assistance from KISC, from DOA, and also from the County with signage and other assistance. So, I think we can eradicate it.

Ms. Yukimura: Okay.

Dr. Vanderwoude: I would also respectfully ask that if people do have some of the older pesticides in the 1960s still in their storage, especially the

ones with the skull and crossbones on it, those are now no longer being used because they tend to be very residual and they are persistent in the environment. Most, if not all of those, are now no longer registered because they have discovered non-targeting impacts to people, animals, and to the environment. So, I would ask people respectfully, that if they have some of those older chemicals, either to not use it or be very careful about how one disposes of them. Many of them contain things like arsenic and other extremely toxic chemicals.

Chair Furfaro: Thank you very much. JoAnn.

Ms. Yukimura: So, just on the disposal of those pesticides. They should call somewhere to dispose of them properly?

Dr. Vanderwoude: Yes, there is a Pesticide Branch Representative here in Lihue with the Department of Agriculture and it would be a very good idea. She is extremely helpful. Anne Kam, I believe, is her name, and I would definitely contact her about how to dispose of those older pesticides.

Ms. Yukimura: Because your point is that it lasts a long time in the environment and it is highly toxic?

Dr. Vanderwoude: Yes, some of these older pesticides are extremely toxic and really need to be handled very carefully.

Ms. Yukimura: Thank you.

Chair Furfaro: Thank you very much. I am going to call one (1) more time.

There being no objections, the meeting was called back to order, and proceeded as follows:

Chair Furfaro: Discussion from the members? Mr. Hooser, I will start with you and I will go around the table.

Mr. Hooser: Just real briefly, Chair. The presentation was very informative, thank you. I had some first-hand experience with the Kaua'i Invasive Species Council with regards to a Coqui frog that one night I heard at my house going off in Wailua Homesteads. We called and they came out right away and we got rid of it immediately. So, my compliments to them for their fast work and they are an important asset to our community. Thank you.

Chair Furfaro: JoAnn, I will go to you.

Ms. Yukimura: Okay, thank you. First of all, I want to thank you, Chair, for introducing this Resolution because it does help increase awareness and we cannot keep our island free of these invasive species that have such huge impacts on our economy, life style, and on our well-being without the help of the community. So, I am glad that we are talking about this issue and I want to ask that before we vote on it, we have the Clerk read the four (4) "Be It Resolved" paragraphs because they talk about what needs to be done if you find these ants on your property. I also want to say that when the Superferry was an issue, this was part of the issue for us who were really concerned because it would have just increased the points of coming in whether it is dirt or soil or people's cars.

So, I feel the State is not doing enough to do prevention and I am hoping that there will be other measures. I hope somebody is working on other measures for control of incoming nursery plants, dirt, and other plants so that we can prevent these highly impactful invasive species from coming to our shores.

Chair Furfaro:

Thank you, JoAnn. Mr. Bynum.

Mr. Bynum:

I want to thank the gentlemen for being here today and all the great work. This presentation was important, but I mostly want to acknowledge our Council Chair. We all have the opportunity to serve here, meet wonderful people here, know what is happening in our community, and provide stewardship. Chair has been a mentor to me in many ways and since early on the Council, a mentor to our whole community about this invasive species issue.

Chair Furfaro:

Thank you, Tim.

Mr. Bynum:

I want to acknowledge his good work, in my view, and I think this is not unfair to say. We would have a huge Coqui frog infestation if not for the leadership of our Council Chair on that issue when I first came on the Council. So, this is a continuation of that and it is very much appreciated. Thank you.

Chair Furfaro:

Before I go to you, Mr. Kagawa, I want to confirm what Mr. Hooser said about working with KISC, but I want you to know behind me on the Coqui frog push was JoAnn Yukimura. If you have to track through Lāwa'i Valley at night with a flashlight looking for Coqui frogs, it is better you pass a Money Bill because she is intense. Mr. Kagawa, you have the floor.

Mr. Kagawa:

Thank you, Chair. First of all, I would like to thank Casp, Raymond, and even Craig Kaneshige who is not here. I personally know Craig and I think he does a wonderful job with the pest control for the Department of Agriculture. I will be calling him and see how we can help him to control this problem because I know that it can easily be transferred to more than Kalihiwai. If we can contain it there, I think that is the important part, to just contain it there and try and reduce the size there. We do not want it to spread. I think Kaua'i has done well. Like Councilmember Bynum just said, we do not have a mongoose problem, we do not have a Coqui frog problem, and I think it is a credit to KISC and the Department of Agriculture in really controlling pests on Kaua'i and we need to continue that. These ants give stress to all of us. Those black ants give us stress when they are around our house, when we are watching television and they are crawling on us. Imagine these Little Fire Ants, they will put a big sting on you. So, I think this is a really important one, Chair. I think we have to support, the Department of Agriculture or whomever it be, KISC, and really contain this problem. It could be a really bad one. Thank you.

Chair Furfaro:

Thank you. Mr. Kagawa, I want to thank you also for bringing it to our attention, the concerns of what is happening on the West Side park at Salt Pond as well. Thank you. Mr. Rapozo.

Mr. Rapozo:

Thank you, Mr. Chair. I guess for the public, www.LittleFireAnts.com is important. A lot of resources there. I am not sure if the gentleman that testified about the ants that rain on him by the trail is in the area that you are talking about. It is? You are familiar with what he is talking about? Okay. I think that is critical, making sure that we keep the State apprised of all of

the possible infestations throughout the island because I think this is something that we can get a handle on and we should definitely work to that end. Thank you all for being here, for the information, and I guess we will get updates as time progresses. Thank you.

Chair Furfaro:

Thank you, Mr. Rapozo. Vice Chair Chock.

Mr. Chock: I just wanted to thank Chair Furfaro for his leadership, not only for the introduction of this Resolution, but also for the follow-up to the State to ensure that the preventive measures are being taken care of. I think that is the biggest piece that we need to look at to ensure that we stop these invasive species from coming forward. I also like the idea that I think it was Mr. Mickens that mentioned about sharing the resource of information with our professionals out there, our exterminators. So, if we can make sure that occurs in terms of the information you folks have had to share. I am sure that they are dealing with it, but to know how to deal with it is really important and I am just looking forward to seeing things happen. Thank you.

Chair Furfaro:
JoAnn, you have the floor.

Thank you. Anyone want a second time?

Ms. Yukimura: I just want to add on to the compliments that were given to the Chair and me on the Coqui frog because it was the entire Council that voted for the budget that was critical, but the real heroes as far as I am concerned was KISC. I want to acknowledge the leadership of Karen Gunderson who left recently, but that was fifteen (15) acre infestation of Coqui frogs and it was the really intelligent approach. Craig was also part of that Committee and Ray too, I think. They were so scientific in their approach, they were relentless, which is what you have to be on these issues, and they avoided a horrible situation for all of us. Can you imagine if the Coqui frogs got down to Po'ipū, the visitor industry, and all over the island close to our homes? It would have been a miserable thing and would have had many both economic and life style impacts. So, we were happy to give money to a team like that, that used the money so well. We really acknowledge and thank KISC. Thank you.

Chair Furfaro: Thank you, JoAnn. Before I call a vote, I also want to echo the work. Karen Gunderson is still in touch with us even though she had moved on to the West Coast and so forth. It was Karen that worked with me and with Jenelle from our staff – Jenelle, thank you very much, on the wording of this Resolution. It was Karen also, we another one that is coming up soon about the testing of mites for our honey bees. So, that was Karen that helped work with Jenelle and I on the verbiage for that when we get it. It is only appropriate for us to really thank Karen for all of the great things she did with her stewardship of our island. She has always worked very closely with us and we will stay in touch with her and that was the appropriate thing. Now on that note, we would like to have some *kōkua* and ask the Clerk to read the portion of the Resolution from “Be It Resolved.”

Mr. Watanabe: We are reading from Resolution No. 2014-17, which is entitled “RESOLUTION REQUESTING THAT THE STATE OF HAWAII AND AFFECTED COMMUNITY MEMBERS EXPAND ERADICATION AND PREVENTION EFFORTS REGARDING LITTLE FIRE ANTS (LFA).”

“BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII, that the County of Kauai requests that the State of Hawaii continue and expand its prevention and eradication efforts aimed at completely and permanently removing all Little Fire Ants from all islands of the State of Hawaii, by the enforcement of inter-island bio-security efforts, and other methods. In particular, adequate resources should be expended for controlling and reducing LFA populations on the Big Island, and preventing current and future movement of LFA between islands.

BE IT FURTHER RESOLVED, that the County of Kauai requests that any property owner, lessee, or person otherwise occupying a location on Kauai, who suspects the presence of Little Fire Ants at that location, immediately report the suspected presence to either the State of Hawaii Department of Agriculture (HDOA), or the Kauai Invasive Species Committee (KISC). HDOA, KISC, or both, may then respond by confirming the suspected presence and, if applicable, engaging in immediate treatment.

BE IT FURTHER RESOLVED, that if a Kauai property is confirmed as having Little Fire Ants present, to prevent further spread of LFA on Kauai, the person or persons exercising control of the property should, for the good of the community, cause all green waste to remain on the site of that property until the property has been deemed LFA-free by the Hawaii Department of Agriculture.

BE IT FURTHER RESOLVED, that if a Kauai plant nursery or plant distribution center is confirmed as having Little Fire Ants present, to prevent further spread of LFA on Kauai, the person or persons exercising control of the plant nursery or plant distribution center should, for the good of the community, cause all products to remain on the site of that plant nursery or plant distribution center until the site has been deemed LFA-free by the Hawaii Department of Agriculture.

BE IT FURTHER RESOLVED, that copies of this Resolution be sent to all members of the State House of Representatives and State Senate, Governor Neil Abercrombie, Mayor Bernard P. Carvalho, Jr., Hawaii Invasive Species Council, Coordinating Group on Alien Pest Species, Kauai Invasive Species Committee, Big Island Invasive Species Committee, Maui Invasive Species Committee, Molokai Invasive Species Committee, and Oahu Invasive Species Committee.”

Chair Furfaro: Thank you, and thank you, JoAnn for recommending that we read the “Be It Resolved” portion. Before I call for the vote, I also want to thank Mr. Steve Hall from our County Attorney’s Office who had worked on the policy statement that was just read. I think Steve is somewhere today at the County. Thank you, Stephen. Dr. Vanderwoude, we appreciate you being here from Hilo, and also the representatives from KISC here today, much appreciated. To the Clerk, I have a motion to approve and a second. I would like a roll call vote, please.

The motion to adopt Resolution No. 2014-17 was then put, and carried by the following vote:

FOR ADOPTION:	Bynum, Chock, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 7
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Mr. Watanabe: Seven (7) ayeas.

Chair Furfaro: 7:0. Very good. Now, to everybody in the audience, I want to make sure we have an understanding, I am limiting testimony today to three (3) minutes. Any further testimony is at the discretion of the Chair, but we do have so much to cover today with the start of our budget tomorrow. I want to make sure that you folks understand that. I also want to take the recess for our ten (10) minutes at this time and I will not be able to thank the Doctor as he is walking out the door. So, I want to let you know that we would like to be back at our table here in ten (10) minutes. So, we are on recess and we will be back in ten (10) minutes.

There being no objections, the Council recessed at 10:16 a.m.

There being no objections, the meeting was called back to order at 10:30 a.m., and proceeded as follows:

Chair Furfaro: *Aloha* and good morning. Again, this is the continuation after our recess. This is my intent to the Clerk and to those of you that are in the audience, the Council has had an opportunity to have individual briefings on the Kīlauea Agricultural Park presentation, individually with the Office of Economic Development, but we are the day before we start budget. So, we are in a very difficult position as it comes to getting business done today that sets the tone for the budget coming forward. So, I am going to take public testimony first because at 11:30 a.m. we have to break for a visit from our attorneys on other subject items at 11:30 a.m. and then at 1:30 p.m., we have the ownership presentation on the rebuild of Coco Palms, but there might be some of you from the North Shore that have come in, want to give testimony, and if you are in a situation where you are wanting to give testimony, but have to leave, somehow let the Clerk's staff know that. We are going to start with taking testimony on this proposal. We will end by having the Office of Economic Development at some point in time, make the presentation to the Council as a body, but like I said earlier, the Council has met individually with these people that have drafted both legal the Department and Economic Development, the proposal. We have a telephone on? If you could silence your phone. Oh, that is you, Chief? Somebody in that back, thank you very much. Your *kōkua* is appreciated. If you do plan to speak, I will be giving you your three (3) minutes up front and you need to sign up with our staff. Do we have a sign up list, Mr. Clerk?

Mr. Watanabe: Yes, we have, Chair.

Chair Furfaro: On that note, let us begin by reading the item.

Mr. Watanabe:
number two.

We are on page 5, under Legal Documents,

There being no objections, C 2014-96 was taken out of order.

LEGAL DOCUMENT:

C 2014-96 Communication (03/05/2014) from the Director of Economic Development, recommending Council approval of the County of Kaua'i Kīlauea Agricultural Park Agreement with Malama Kaua'i and the Kīlauea Agricultural Committee relating to the Stewardship of Kīlauea Agricultural Park Complex located on real property identified as Tax Map Key (TMK) No: (4) 5-2-004-047 (por.) and (4)-5-2-004-099 (por.), 75 acres of land situated in the Hanalei District, Kaua'i.

- County of Kaua'i Kīlauea Agricultural Park Agreement for the Stewardship of Kīlauea Agricultural Park Complex located on real property identified as Tax Map Key (TMK) No: (4) 5-2-004-047 (por.) and (4)-5-2-004-099 (por.)

Chair Furfaro: How many speakers do we have?

Mr. Watanabe: Six (6) speakers so far, Chair.

Chair Furfaro: Six (6) speakers so far? First offering again in the audience is, if there is anybody who is planning to testify, please sign up now for your three (3) minutes. If not, as it is with the six (6) speakers right now, I guess do we have a representative from Malama Kaua'i? Do we have a *po'o* from Malama Kaua'i. Keone, I would like to start with you. For the Agricultural Community Group, the original group, do we have a speaker? Is that you, David? Who is going to be speaking? Rodney? Okay, thank you. Have you signed up? Okay. We will call you second then. We have read the item.

There being no objections, the rules were suspended to take public testimony.

KEONE KEALOHA: Aloha Councilmembers. My name is Keone Kealoha and I am currently the Executive Director of Malama Kaua'i. I am going to be applying for the Stewardship Agreement of the Kīlauea Agricultural Park Complex. This project is over a thirty (30) year project that was originally a tradeoff between a for-profit developer and the community of Kīlauea. I think you have the documentation in front of you and you know the story. We all know the story and it has been the same story. I think what is different is that today, the Council has the ability to change that story and with a majority vote to move this into the hands of the community. We are more than ready to take on this challenge, we are committed, and we are dedicated. The community has been ready. There may be questions that come up as how are you going to do this or how are you going to address this issue or this infrastructure need or this funding. All of the planning has already been done. We know that we can get water. The County has done the study. We know that the land is there. We know that we have the farmers. We know that there are funding partners out there waiting. We know there are people that have equipment, skills, and expertise. Every possible person that we would need, every professional that we would need is part of our community and they are ready to step forward and make this a reality. All I think we are asking for is the County Council to be a partner with the community in this project. That is all that I have to say at this time.

Chair Furfaro: Members, questions for Keone?
Councilmember Yukimura, you have the floor.

Ms. Yukimura: Hi Keone.

Mr. Kealoha: Hi.

Ms. Yukimura: Thank you for being here and you are going to be here throughout so even after George's presentation?

Mr. Kealoha: Yes, I will be here if there is any additional questions that might be needed, I am able to.

Ms. Yukimura: You said that all of the planning has been done and that there is water. Do you know how much it will take to bring the water to the site?

Mr. Kealoha: Well, according to the County's own reports that were done, the current report states that it would be in the neighborhood of three million five hundred thousand dollars (\$3,500,000) to drill three (3) wells and provide the infrastructure. So, we know that there is a verifiable source of water because the County has done that. They commissioned that study and those numbers. So, that I think, is the starting point. Now, anything that we can do to reduce the cost, that we can grow partnerships in our community for other sources of water or other ways that we can obtain water, we are going to look for those, but we know for certain that we at least have, through the County's own process, a verifiable source of water for that location.

Ms. Yukimura: But the story I was told is that the County plan is far too expensive and that by giving this to the community, it will be done more cheaply through volunteer and other labor. So, I guess I would like to know what your plan is for getting water to the site and how much it will cost.

Mr. Kealoha: Well, I think I just stated the plan \approx scenario, that if we can raise three million five hundred thousand dollars (\$3,500,000), it has already been verified through the County's own contracting, that we do have water at the site.

Ms. Yukimura: But my understanding was that there is an alternative plan to the County's plan.

Mr. Kealoha: There is always one of those, yes.

Ms. Yukimura: So, what is the alternative plan?

Mr. Kealoha: Well, I think there are several that are on the table that we can explore more deeply. Just as an example, Bill and Joan Porter have a five hundred (500) acre parcel across the highway. They are already utilizing water from the Kalihiwai Reservoir as far as suppression for an existing building that is there. There is a culvert that is still in existence that goes under the highway. There is potentially a new road that is going to be going from the highway to the town core center as part of the proposed shopping center development, which will contain an easement, a County easement, I believe. So, there is a possibility of working with that landowner to provide water to, and

having it get at least to the town core, and then looking at some other partnerships. I believe the Water Department has a 20/20 plan that is a little behind as far as implementing it, but one of their items includes replacing the main that goes down to Kilauea Road. So, there is a possibility of utilizing existing infrastructure. See, what I am saying though, is that these are possibilities. These are things that we have looked at. We have a meeting tomorrow with Bill Porter to discuss the water issue.

Ms. Yukimura: Well, the thing is that this whole history has been built on possibilities.

Mr. Kealoha: That is right.

Ms. Yukimura: The reason why we are still here today looking for an agricultural park is because there were possibilities, but there were no concrete plans.

Mr. Kealoha: And we are here.

Ms. Yukimura: So, that is what I think I as a Councilmember who is looking to give a Stewardship Agreement to a community group for a ten (10) year period, wants to know how are you going to use the ten (10) years to get this thing accomplished. For example, how much water is needed for you agricultural park plan? Do you now that?

Mr. Kealoha: Well, if you look at the report that was commissioned by the County, the well that is being proposed, the three (3) wells address that issue based on the Master Plan that the Council approved. I think you approved that pan some years ago. So, that is the plan we are implementing. We are not looking to do anything at this time, than what has already been proposed and approved by the Council, the Master Plan. So, looking at that Master Plan, it already dictates what percentages of agricultural activities would be happening on the parcel and based on that, the projections for the water in those wells was determined.

Ms. Yukimura: So, the plan that the County has was not created by farmers. So, I do not know how realistic the plan is, but it is not a business plan. That is what you really need in order to make something happen. So, I was wondering if you folks have a business plan.

Mr. Kealoha: I believe that there is some initial performa material that has five (5) year financial projections and an agate chart timeline. I think that will be presented a little bit later when the Director of Economic Development offers his presentation.

Ms. Yukimura: I know I did ask George for that and I hope it is on its way because it was not given to us when we were briefed individually and I did ask for it. So, you do not have a business plan though?

Mr. Kealoha: We have done years of work to get to this point. I think you made reference to the plan that the County Council approved as the Master Plan for the project and then at the same time, I felt like you said that might not be the appropriate plan.

Ms. Yukimura: We never approved the plan.

Mr. Kealoha: The Master Plan?

Ms. Yukimura: We never approved the plan.

Mr. Kealoha: There was a Master Plan that was presented and approved by the County Council some years ago. It was performed by Kimura International. Are you familiar with that plan?

Ms. Yukimura: Yes. I believe it was done while I was on the Council. I do not believe we approved that plan.

Mr. Kealoha: It is posted on the County's website.

Ms. Yukimura: That does not mean it has come to us for approval, but okay. Thank you.

Mr. Kealoha: Okay. Maybe we can check on that.

Chair Furfaro: Keone, before I give the floor to Mr. Rapozo, I do want to say so we do not get caught up between a business plan and performa, your group has done a performa though based on anticipated...

Mr. Kealoha: There is an initial performa that has been laid out based on our best knowledge to this point. You know we have dedicated all of our time as volunteers to this point. There is no really paid employee of the agricultural park because in fact at this moment, we do not have an agreement in place. If we are able to obtain that agreement, what it will do is it will allow funders to have more confidence in our request for their support. So, that is why I think it is crucial that when we get that Stewardship Agreement in place, that will allow us as a community to bring in those funding partners who are kind of waiting to see that there is some site control that they can invest into the future.

Chair Furfaro: Mr. Rapozo and then Vice Chair.

Mr. Rapozo: Thank you, Mr. Chair, and thank you, Keone. Let me just start. I guess I look at it a little differently as far as where we go from here because this has been a project in the waiting for a very, very long time. I think the problem is that the County held onto it for too long rather than allowing the farmers to work the details. I think that is where the County tried to be farmers. The County tried to know more than farmers and not maliciously, but just because they thought they could. After all this time, I think this is an opportunity for the farmers to now control their fate and I have faith in that. So, I look forward to this. My question, as I am reading through the actual agreement, there are some conditions. This land was deeded over to the County because of a Special Management Area (SMA) permit that they had some conditions. Now, were all of those conditions met? I guess when I am looking at the budget, the initial budget in the presentation for the water line irrigation system was six hundred sixty-two thousand dollars (\$662,000) and the current budget is actually three million seven hundred thousand dollars (\$3,700,000). Has the irrigation system been constructed?

Mr. Kealoha: No, there is no water to that particular parcel at this time that I am aware of.

Mr. Rapozo: And your organization is set to move forward and take that on?

Mr. Kealoha: Yes. Our organization is the 501(c)3 non-profit that is working in partnership with the community. So, really, if you look at the Stewardship Agreement, Malama Kaua'i as an organization will help to support the community up to the first two (2) years of the agreement. Within that time period, probably nine (9) to twelve (12) months is a general estimate of how long it would take to form a community based 501(c)3 that could take that on. To answer your question more directly, yes, that is why we are here. We are completely aware of all of the needs that will have to be met in order for the property to be realized as it is in the Master Plan, but we are willing to take that challenge on and we have been for some time.

Mr. Rapozo: Well, I guess my concern is that as I am reading through the Stewardship Agreement will take on the responsibility of constructing a water line that was required as a condition of a permit and a development. In other words, your non-profit and your farmers are going to be tasked with doing something that should have been done by a developer. That is a problem I am having. Now, if that is the only way that we are going to get it done, then fine. Those are the questions that I have of our Administration, is are we going to hold that developer to some kind of compensation to complete what was a condition in a development? I do not see how the developer can be forgiven for not completing that very, very important component of this farm lot. As I am reading all of these things, it is like you folks and the farmers are saying, "Hey, we are going to get together and we are going to get the money." That is all good, but at some point, the developer needs to come back and pay back the people because that is the condition of the development.

Mr. Kealoha: Right.

Mr. Rapozo: So, I will be pursuing that question with the County Attorney's Office as well as Planning.

Mr. Kealoha: I appreciate that.

Mr. Rapozo: But that is how I am reading this and as I am reading the materials that I just got today in the packet, it is even clearer to me that some of these things should have already been done.

Mr. Kealoha: Yes, and I think what the community is saying is that we are not saying that it is not an option, we do not want to look at that piece, but we are willing to take the ball and go ahead and move it forward and when it comes time to have the conversation, then we would like to be the ones to say, "Hey, can we have this conversation now." Not necessarily have you folks bear that whole burden about trying to find out what are the details of the water. We want to investigate all of the possibilities that we can and if there is some restitution that needs to come to make that original agreement *pono*, then we would be happy to look at what those different options are.

Mr. Rapozo:
I want to support this today.

I agree. I am prepared to vote on this today.

Mr. Kealoha:
appreciate that.

I appreciate that. The community would

Mr. Rapozo: I want to set precedence today. I want this to move forward because we have had it for way too long and we have not made it happen. I do not believe this should be the deal-breaker, but I also think that this body as well as the Administration needs to pursue that. Like I said, it could be years down the road, but at that point, if compensation is warranted whether it is through an agreement or it is through legal action, that needs to be taken care of. There was a condition of an approval.

Mr. Kealoha: There is one (1) item in the Stewardship Agreement. There is a line that reads to the effect of, this agreement recognizes that there may have been previous requirements or other documents in the SMA and this agreement does not preclude those items.

Mr. Rapozo:

Thank you. Thank you, Mr. Chair.

Mr. Kealoha: But again, at the same time I just want to reiterate. We are not here to be in opposition to the County. We one hundred percent (100%) have been working with County folks to get it to this point and we want to continue to do that in years ahead. We are not here to be an adversary. We are here to do this in partnership with you folks and however we can figure it out. We are going to try to get everything done for free or through good will of the community or their partners as much as we can, but if there is some assistance we might need like as you suggest, maybe finding out the details of that and maybe looking at what resources the County Attorney or other things that could help facilitate that. Very appreciated. Thank you.

Chair Furfaro:

Mr. Chock.

Mr. Chock: Thank you, Chair. I think this is a great celebration to see that this is coming full circle and headed in the right direction for the community to take the lead on. I also agree with some of what Councilmember Yukimura's concerns are and I think that those are steps that we need to take. I think that we can act in good faith to move forward on something knowing that we have benchmarks that we can look forward to and those are the things that I think this body is looking for as well. So, if we can continue to partnership on those notes, then we would be more inclined to just say, "Yes, let us sign this over." We know that we cannot do it and we need to get it into the right hands. One of my questions was really about Malama Kaua'i's role. Is the intent to move towards this project to be its own non-profit or run by its own non-profit and in terms of the timing, when would that occur? The second question, I will just give it to you now, is obviously this is community driven and whenever we do something with inclusive of the community, it can be a long process and we want to make sure that everyone's voices are heard and so forth. Do you folks have any plans specific to that in terms of the process that you have in place to engage the community?

Mr. Kealoha: Well, on the first question, in the Stewardship Agreement itself, it does speak to the timeline for the transfer to a community based 501(c)3 non-profit. It is anywhere up to two (2) years. The first

two (2) years that Malama Kaua'i would act as that entity and then work directly with the community to do that. We have lawyers in our community that are willing to support the project and do some of that paperwork that may be required. A typical 501(c)3 application can take anywhere from maybe seven (7) to twelve (12) months to process. So, we felt that the timeline of two (2) years is more than adequate to meet that timeline. On the other question as far as...

Mr. Chock: Will Malama Kaua'i be the umbrella to oversee the community engagement process?

Mr. Kealoha: Yes. We will definitely support, with our resources as we can. I mean, we have been doing community engagement for probably over seven (7) years of the length of the organization, but really, the community is already engaged. As you can see by the number of folks that came down to support the Kīlauea Agricultural Park today in the middle of the afternoon. So, I think that as far as doing community outreach, that is the cornerstone of Kīlauea's approach. It has always been a community strong town and there is a strong Neighborhood Association that is involved and there is a subcommittee on that organization that is tasked with looking at the agricultural parks. So, there is already infrastructure, resources, and partnerships that have been created. So, doing those big meetings, connecting with people, doing the charrettes, just as was done with the Kīlauea Town Plan, a lot of outreach and time spent to collect everybody's ideas and come up with the best plan possible given the history and the requirements to meet from the original SMA as well as where our community is now thirty (30) years later.

Mr. Chock: What is your idea of what the County's role would be? I know that there are some specific things here that is written up in terms of how we would support it financially. Is there anything else that you would see our role in the future in this partnership?

Mr. Kealoha: Yes, I think the County does have some of the equipment and some of the expertise, whether those are looking at ingress and E-grass things from the Planning Department, talking to Public Works and maybe utilizing some of your bulk purchasing power to acquire aggregate materials or things like that. We are not putting all of those costs on the County, we are just saying that you might have more available access to some of the things that would help to move the project forward. So, as we come up and start to distill the plan who are those potential partners including the County, and how can we best realize the vision of the Agricultural Park Complex?

Mr. Chock: Okay. Thank you.

Chair Furfaro: Before we go too much farther, and I am going to give Mr. Hooser the floor next, I just want to clear up some information here. For everybody, the final assessment from Kimura & Associates, the plan was not necessarily approved.

Mr. Kealoha: Okay.

Chair Furfaro: Here is the documentation. It was accepted by the Administration in December of 2008 from a presentation. It was then accepted by the County Council on February of 2009. Now, there is a difference between accepting the document as planned versus approving the plan. So, I do not

want to get caught up on these little points, but that is the difference that we are spending time on between you and Councilmember Yukimura. I would also like to say, from that piece that was accepted and I was Vice Chair of the Council then, but I will share with all of the members here at the table my correspondence that was followed-up to Mr. James O'Connor. This correspondence basically said I was making reference to the original plan and some of the things that were left out, and I think the County still has an opportunity for, dealt with other pieces that it was in the Crater Hill proposal including a dedication for a school, a dedication for land for a botanical garden, a dedication for land for an agricultural park that we are talking about right now, and the provision for irrigation for the agricultural park. This correspondence was copied to Mr. Costa, Mr. Trask, Mr. Dahilig, and Dee Crowell at Planning. So, those are things that still have to be ironed out because I believe there is some potential untied final agreements. So, those are the things that have to be negotiated. I would like to use this time here because of our tight schedule, because you already told me you can come back and I would like to remind my colleagues. We can go deeper into questions and call people back, but let us use this time for the people that want to give testimony for the facility. Mr. Hooser has an opportunity to speak to you about questions, but I am saying after this, I want to make sure we are taking testimony because this will be carried on later in the day. Mr. Hooser, you have the floor.

Mr. Hooser: Thank you. Thank you, Keone. I really want to say thank you loud and clear to yourself, to Malama Kaua'i, and to the entire Kīlauea community. I think it is just a wonderful thing that is happening right now and I think it probably should have happened twenty-five (25) years ago or so. Could you just briefly maybe list a few of the other partners that are involved in this program, or key players or participants if you would?

Mr. Kealoha: Well, I think more than anything it is the community itself and as I stated earlier, we have people with Planning degrees, we have the lawyers, we have engineers, we have several heavy equipment operators that do jobs for the County and the State that have already said that they want to participate, they want to see this agricultural park realized. Through some of our outreach, we have folks at the State Legislature who are interested in supporting the project in the future. There are lots of grants that are able to be tapped on whether that is for doing some of the site work, building some of the infrastructure, operating some of the educational tracks that are being discussed. There are Federal programs for this and then there is private foundations that we have already talked with, some that work at a National scale and I could go on to list some of those, but we do have those relationships.

Mr. Hooser: Thank you. I think that is the kind of the point I wanted to get at, is that the County has been working on this and my hats off to the Director of Economic Development for getting the Stewardship Agreement together, but you said thirty (30) years?

Mr. Kealoha: A little over thirty (30) years I believe.

Mr. Hooser: So, I believe that for the last thirty (30) years there has been a lot of planning going on and a lot of we could do this, we could do that, and the County has not been able to really come to the conclusions and implement this. I believe what I am hearing you say is that you do not have every single answer to every single question here today, but that you and your group are looking at all of the plans that have been in place and that you folks as a

community will figure it out and move it forward and put this land into productive use. Is that a fair assessment of what you are saying?

Mr. Kealoha: It is, and the original agreement that was the land was to be used by Kilauea folks to do farming. So, there is really no other group to step forward except for the one that is before you today, the Kilauea community. So, it is just a matter of helping us to realize what that promise was and yes, we are ready. I agree, we do not have every answer to every question and it is great to do risk assessment and we understand that. We have the partners though. We have the people in the community and even beyond our community who have already voiced their promise to help us realize this agriculture park. I think what we bring to the table is dedication and commitment.

Mr. Hooser: Great. Thank you very much. Thank you, Chair.

Chair Furfaro: Again to those, I think we have six (6) people signed up. Am I correct?

Mr. Watanabe: Yes, and in addition, we have seven (7) now.

Chair Furfaro: Okay, we have seven (7). I am sharing with you now, I think before we break for our next appointment and appropriate notice has been given. We have Mr. Sproat first, right coming up? Go ahead, David. David, I would just like you to be giving us testimony right now about the general concept and the transfer agreement that is before us. Thank you for being here. Go ahead.

DAVID SPROAT: Council Chair and fellow Councilmembers, my name is David Sproat and I want to provide a perspective and also answer some of the questions that were raised here as briefly as I can. I was one of the original interveners in the project along with Dave Moore and Dave Boynton. I saw this whole thing as Keone said, I will echo, it was a transfer of values. So, the subdivision was allowed to go forth. We negotiated that so that this was originally ninety (90) acres. It became seventy-five (75) because of an engineer design error on the part of the developer, would go into agriculture and there is an agreement to that effect it has to in agriculture. It is not the County, and I wish JoAnn would listen to this or other people, that has held up this process, okay? It was the developer. For twenty (20) some odd years, the land was never transferred. It was supposed to be deeded across and we threatened the revocation of the SMA that allowed the land to be deeded to the County. The County has only held it for the last five (5) or seven (7) years maybe and they have gone through the planning process and so forth. So, there is an ownership with Kilauea Town. I am sorry we do not have all of the answers JoAnn, but a lot of things start with a dream and a promise. That is how Wiapa started. When you see some dinosaurs like us coming into the room, you know it is community driven because otherwise we would not be here. It started that way and I could not bring for example, like Wiapa, that project to fruition as it is today without the young ones coming on board. That is what you see with Keone and these others, but we support them one hundred percent (100%). So, that is a very important point about it was not the County that held it up, it was the developer. The developer holds a lot of the responsibility. Thank you, Councilmember Rapozo, Mason, and the rest of you. There is water to the site. There are five (5) County meters to the site, no five (5). We might have given one (1) to Jim in this last trade-off when he took one (1) more lot. See, there has been a

lot given to the developer. He took one (1) of the lots that should have been in this seventy-five (75) acres. It was given to him. As a concession there were only to be twenty-six (26) I think it became 26B. Anyway, so there is a lot of background why is has evolved. Now, it had been held up for thirty (30) some odd years mostly because of the developer. He has tried to sell it a number of times. That is really important, but I tell you I am excited with the energy I see. I have equipment, I am going to support it, I will go in there and start clearing, and the County can come in and support as much as they want. I think there are some very real ideas. As you notice, Keone could not speak to all of them in detail because some of them are being negotiated, they are being talked about, and they are being presented.

Mr. Watanabe: Three (3) minutes.

Mr. Sproat: The Porters as you have noticed, they are very community minded people and I think they will come onboard and support something like this. I urge the Councilmembers. I thank the six (6) for the support that you show and I would like to have JoAnn's support on this too. Thank you.

Chair Furfaro: You know, again...

Mr. Sproat: I think I heard three (3) minutes that is why.

Chair Furfaro: Members, I do not want to get into a lot of discussion because we are going to get into that with Economic Development. I want to take testimony first. I will allow you one (1) question, JoAnn.

Ms. Yukimura: Thank you.

Chair Furfaro: Okay.

Ms. Yukimura: So, David, in this arrangement there appears to be some legal issues that still have to be resolved.

Mr. Sproat: In terms of performance by the developer maybe.

Ms. Yukimura: Well, how many water meters there are any maybe one (1) was taken by Mr. O'Connor. What is...

Mr. Sproat: Some matters have to be looked into, yes.

Ms. Yukimura: So, whose job is it going to be to resolve those legal matters?

Mr. Sproat: Well, we can provide our own legal support or the County could support us in that if they would like to because we are looking at a partnership agreement, right? This is what we are looking at.

Ms. Yukimura: Well, partnership agreements are clear about which roles the partners have. If you do not have clarity, you get all problems later on. Oh, you were supposed to do it. No, you were supposed to do it. So, I mean...

Mr. Sproat: I probably can provide the most background in terms of what those agreements are because I was there from day one (1). I sat through every negotiating process with all of the various Councils. I think it took about two (2) to three (3) years to negotiate this subdivision. I can answer that and I can speak to the agreements that need to be enforced.

(Mr. Bynum was noted as not present.)

Ms. Yukimura: Well, I am sure you can. If you could solve the problem by dictating what the solution is, I would love it.

Mr. Sproat: I cannot solve the problem.

Ms. Yukimura: But when you talk about dinosaurs, I am one of them and as you know, I was involved in the advocacy of the condition for the SMA permit and the Kaua'i Public Land Trust first tried to work on this issue too. So, there were a lot of steps through this process and like you have pointed out, how many years to not yet have an agricultural park.

Chair Furfaro: Okay. I do want to say in our Rules, there is no dialogue going on. This is a point that we can ask questions. I just heard some history being discussed. I did not hear a question. So, David, I am going to ask during the break because we will break today, Mauna Kea and the County Attorney's Office as well as George and the Planning Department, I am not going to ask you come up, but please verify to me the appropriate number of water meters that exists as that is an asset for the land and we should have an exact number. David, I am going to ask Rodney to come up.

Mr. Sproat: Yes. I was just going to make one (1) last statement that I, also with Rodney, sat on the original Kilauea Agricultural Association that was involved in this.

Chair Furfaro: Yes, and that was the reason I wanted the old timers to come up and testify first. You have a question for David, Mr. Kagawa? Go right ahead. Question now, not just summary.

Mr. Kagawa: Chief, thank you for coming. I totally support this project. Is there a possibility of growing taro at some point if we can get some water coming over?

Mr. Sproat: You could actually grow dry land taro.

Mr. Kagawa: Dry land taro?

Mr. Sproat: Yes.

Mr. Kagawa: With the metered water?

Mr. Sproat: Kilauea has one hundred (100) inches of rain a year. You could actually grow it without irrigation, dry land taro.

Mr. Kagawa: I know there is a lot of taro grown in Hanalei, do we have any taro grown in Kilauea?

Mr. Sproat: Commercially, there may be a few small patches, but not much, not like Hanalei.

Mr. Kagawa: Is it going to taste as good as yours?

Mr. Sproat: I do not think so.

Mr. Kagawa: Thank you.

Chair Furfaro: David, thank you very much.

Mr. Sproat: Thank you.

Chair Furfaro: I want to call up Rodney now. Rodney.

RODNEY YADAO: For the record, my name is Rodney Yadao. I am here basically for the young people that you see back here. We have been fighting for agriculture for a long time and I see they are responsible now. So, my son said to me, "Dad, are you going to go speak?" I told him, "Oh, I do not think so." I have been to a lot meetings in my life, but thank you for the call up and I hope you folks see the wisdom. We do not have all of the answers, but we were working it for a lot of years because the young people, they are interested. Let us give them the opportunity to do what I could have done. So, please, I speak favorably of this proposal and I hope all of you support us. Thank you.

Chair Furfaro: Question? Go ahead, Mr. Kagawa.

Mr. Kagawa: Good to see you again. I have not seen you for a while. You look happy.

Mr. Yadao: You are off at meetings.

Mr. Kagawa: You look happy in your retirement. What kind of things do you foresee? I know that you are a farmer at home. What kind of things do you foresee being successful in growing at that agricultural park?

Mr. Yadao: Kilauea at one time, used to be the capital of guava. You take the thing that grows out in nature. I have been talking to some of the young people. They said they are going to grow crops that can sell, number one, and that is conducive to the growing environment in Kilauea.

Mr. Kagawa: Okay.

Mr. Yadao: That remains to be seen until people come up with business plans. Any applicant who wants to farm has to have credibility. So, the Committee is going to go through, what is your business plan and what is your credibility as far as what you are talking about? That will all come when you talk about business plans. Any young man who is interested has to be smart to understand business first. He is not going to just try farm. He is going to come up with a business plan individually before he comes up to the Committee. So, those answers in time, will come.

Mr. Kagawa: Thank you.

Chair Furfaro: Question? JoAnn.

Ms. Yukimura: Rodney.

Mr. Yadao: Hi, JoAnn.

Ms. Yukimura: Hi. I know we go back a long time. I have seen much. So, who is going to be the ones that judge the business plans or evaluate the business plans?

Mr. Yadao: It will be a Committee of community minded people. They do not have all of the answers either, but it will lead to the credibility of the individual people on the Board, just like you folks are judging whoever comes up here to speak. It will be a collaborative decision.

Ms. Yukimura: Will the people who are evaluating know how to do business plans themselves?

Mr. Yadao: Well, right here is a lot of mentors in the community. So, it was envisioned that they will be mentor farmers to help thee young men and women who want to be farmers along the way just like how retired citizens give back to the community. There are a lot of people in the community who want to give back and make this agricultural park happen.

Ms. Yukimura: So, it will be successful farmers who are evaluating?

Mr. Yadao: And business people in the community.

Ms. Yukimura: Okay, and is that written down somewhere in an organizational plan?

Mr. Yadao: This is the beginning, JoAnn. This is the beginning of a process that has been going on for a long time. So, like I said, we do not have all of the answers and all of those answers will come in time.

Ms. Yukimura: Well, just because Keone said all of the planning has been done...

Mr. Yadao: Yes, we have seen a lot of plans come through the dirt. When you were Mayor, there were plans then. There was applications given then, but now it is happening. So, just let us just support what is happening now and take it from a beginning point. There is nowhere else to go. Just start from the beginning.

Ms. Yukimura: Okay. Thank you.

Mr. Yadao: And the answers will come.

Ms. Yukimura: If your planning is done, you are more than at the beginning.

Mr. Yadao: And we can send you the minutes of all of the meetings to keep you updated on what is going on or you can come. I talked to your

husband about the water. So, the inquiry is out there. There is a spring there and he volunteered to come down with me to see if that spring is still flowing and then he can take a measurement. So, there a lot of people in the community who are willing to take the hike and make it happen.

Ms. Yukimura: Thank you.

Chair Furfaro: Rodney, let me ask you a question. Thank you for the answer about Kīlauea. Kīlauea is quite an agricultural history with it with Titcom and all that has gone, even the Valley of Puhukamu. It actually references a red dry land taro that was grown there. What do you see as the process of coming back and reporting to the Council on your progress? Would we see that every six (6) months? What do you think?

Mr. Yadao: I think the Administration has competent people who has been helping us all along.

Chair Furfaro: And I will ask them.

Mr. Yadao: So, those people will be with us all along, all the way.

Chair Furfaro: Fair enough.

Mr. Yadao: Economic Development. The Mayor's Office had been very open and helpful.

Chair Furfaro: Good.

Mr. Yadao: Yes. I think that open line of communication will certainly continue.

Chair Furfaro: That answers my question. Thank you, Rodney. Okay, I have instructed my staff at a certain point to actually put an orange mark on people signing up because we are going to get to a point that we have to go onto other agenda items that were with us, but I just want to make sure you folks know that not once, but twice, I reminded people about signing up and I do not think at 11:30 a.m. when we break we are going to be able to get to all of you. So, we have taken your name, but it might be 3:00 p.m. by the time we get back to this item. Let us move on. Next speaker.

EDUARDO TOPENIO, JR., Administrative Assistant to the County Clerk:
Next speaker, Mr. Chair, is Felicia Cowden, followed by Talia Abrams.

FELICIA COWDEN: *Aloha.* I am Felicia Cowden. I am actually speaking with four (4) hats, one is person the behind Akamai Backyard, Akamai Learning, Regenerations Botanical Garden, and the former President of the Kaua'i North Shore Business Council. I live maybe a quarter (¼) mile from this place and my Akamai Backyard is something that teaches people and just evangelizes what I call gardening, and I say I am the lazy princess's guide to gardening. I do not like to weed, water, or work. I probably have at least one hundred fifty (150) different successful types of food in my yard. I have so much food, I cannot even give it away I have so much. We even honestly guerrilla garden that agricultural park right now. We go and collect avocados, guavas, and all kinds of food out there and when

we feel sorry for seeds not having ground to go in, it gets dumped out there without water, without inputs, without anything, and it thrives. If you went and you looked at the agricultural park right now, it is filled with trees and plants. So, when they say there is not enough water to grow food, I say whoever says that has not looked. We had a big permaculture class just come here, Regenerations Botanical Garden has been really behind that. If you use different methodologies like permaculture, you do not have to water. I do not water my yard and I have all of that food. I live so close. Our food forest that we have planted up there with Malama Kaua'i and a handful of other organization, we do not have to turn the water on there. I am not joking. We do not run a hose. So, when I hear this might get stuck over water, that really frustrates me because if people know actually how to farm and we could call it modern methods, but it is really old methods, you do not need it. Uncle Rodney said that there is a spring there. There is a spring there. I like that you asked about *kalo*. At one point I had like three hundred (300) really overhead *kalo* plants in my yard that along the water there is a stream that goes down there. You could plant along there. We learn ways of bringing water up from below in our permaculture learnings. What I want to say as the former President of the Kaua'i North Shore Business Council Jim O'Connor was on our Board when this land was being made possible. We were actually really excited about it. We were trying very hard to get that to move forward. We were deeply discouraged to see that progress did not get made and even though I kind of say I am a recovering capitalist or something, it is still in my blood. Eighteen (18) years have been in business with Hanalei Surf Company. I have helped incubate lots of little businesses. I am committed...

Mr. Topenio:

Three (3) minutes.

Ms. Cowden: ...to helping people get their business plans together no problem. Any of these young farmers that I am helping to cultivate through Akamai Learning, I will back them up. Anybody else I do not know, I will back them up. Thank you.

Chair Furfaro:

Thank you, Felicia. Any questions? No?

Mr. Topenio:
Collin Dana.

Next speaker is Talia Abrams, followed by

TALIA ABRAMS: Hi, I am Talia. I really support this. Recently, I had an Edible Landscaping Bill that made it to the Senate and is deferred now, but it is being piloted in Kilauea and I am really excited about that. I think that this agricultural park and this edible landscaping thing will complement each other so well. I am so excited about it, I hope you all support it, and go agriculture. Thank you so much.

Chair Furfaro:

Thank you very much. Next speaker, please.

Mr. Topenio:
Whitlock.

Next speaker is Collin Dana, followed by Ned

COLLIN DANA: For the record, my name is Collin Dana. The Kilauea Agricultural Park is frankly, one of the most exciting developments I have seen in quite some time as a young aspiring farmer. All of these supposed roads blocks that might slow us down or get in the way, really, to me, those are just the next hills that we have to climb. I am not going to let this thing not happen and

there is a whole bunch of people behind me that are in the same frame of mind. Our *kupunas* started this, we are going to finish it. This is an investment in the future of Kaua'i. We all talk about sustainability. This is where the rubber meets the road. It is time to put our money where our mouth is. The issue of water is a non-issue to me. Farmers are really resourceful people. One hundred (100) inches of rain a year. That is *mana* from heaven. So much we could grow without even importing water and there are so many people who are determined to see that we are not even limited by those constraints. So, the idea that this is maybe a sketchy venture, no, no. There are determined people behind this. I think you folks all know what determined people look like. We are going to get it done. We are going to make this happen. So, really, there is no much more for me to say. It is just, make it good, make it *pono*, let the community take this and run with it because we are ready. Thank you.

Chair Furfaro:

Next speaker, please.

Mr. Topenio:
Bradley Smith.

Next speaker is Ned Whitlock, followed by

NED WHITLOCK: Good morning Council, Chairman. Ned Whitlock, farmer of Moloa'a. I have been farming twelve (12) years in Moloa'a on twenty-eight and a half (28½) acres. In those years, I have seen over one hundred (100) young people come through helping me on my farm. To see the enthusiasm and the spark of joy in these young people today at what is happening in agriculture, just the thirst for knowledge and how to grow more things, and just the thrill of greenery sprouting there in the field is something to be (inaudible). As a farmer for thirty-five (35) years, that is very heartening and to have this youthful energy behind this project, I just see through. As far as business plans, all you have to do...I mean go to Kalapō Foods, Steve over there, and ask for their wish list. It is a whole page of things that you could be. Of course, start with the local markets, but for a simple drive down to the Young Brothers, you have three (3) huge stores in O'ahu and Maui that are willing to take all of the corn you could grow, probably all of the meyer lemons you could grow, and the list goes on and on and on. So, the opportunity is there. We can grab it. One hundred (100) inches of rain, wow. I get fifty (50) where I am. So, if you go for citrus or again, taro or things that love that rainfall, to see a breadbasket right there in the yard. Just for people to change the paradime from driving to work somewhere to work for somebody else than to be their own boss and make it happen, and just have fun while they are doing it and be in association with other people while they are doing it. It is just such a beautiful opportunity that I hope the Council will support. Thank you.

Chair Furfaro:

Question for you, Ned.

Ms. Yukimura: Ned, I put a lot of weight on what you say because you have actually farmed for twenty (20) years on Kaua'i, thirty-five (35) years in your...

Mr. Whitlock:

Twelve (12) years here.

Ms. Yukimura:
(20)...

Twelve (12) years on Kaua'i and twenty

Mr. Whitlock:

Twenty-five (25) in Arkansas.

Ms. Yukimura: Twenty-five (25) total?

Chair Furfaro: No, he said in Arkansas I think.

Mr. Whitlock: In Arkansas. So, thirty-five (35), something like that.

Ms. Yukimura: Thirty-five (35) years total. So, you feel that the agricultural park could be a success without any additional water?

Mr. Whitlock: Well, water is great when you are trying to get something to sprout, but it just depends on what your mix is and what you are trying to grow. If you are trying to grow lettuce greens, sure, in the summer time you are going to have some irrigation at some point. Even with the existing meters they have there, that is a wallop start to get something going. If there are other possibilities coming in later...I mean drilling a well is not going to take three million five hundred dollars (\$3,500,000) to build a well.

Ms. Yukimura: How much will it cost?

Mr. Whitlock: It is probably one hundred fifty dollars (\$150) a foot just for the drilling and then electrical costs. So, for fifty thousand dollars (\$50,000) or one hundred thousand dollars (\$100,000) you could have a well happening right there.

Ms. Yukimura: That would be great to show in a plan. That is great. Are you going to be one of the mentors?

Mr. Whitlock: Well, I have just been on the sidelines, but I am glad to share anything I know. Come to my farm and see what is possible. It is happening.

Ms. Yukimura: Yes, well, okay. Thank you very much.

Mr. Whitlock: Alright. Thank you.

Chair Furfaro: Thank you, Ned. Next speaker, please.

Mr. Topenio: Next speaker is Bradley Smith, followed by Adam Asquith.

Chair Furfaro: Bradley and then Adam.

BRADLEY SMITH: Hi Council. My name is Bradley Smith. I have been farming in Kilauea for fifteen (15) years and for the last eight (8) or nine (9) years, I have been farming directly across the street from the agricultural park on land I lease from Mike Strong. That is a little over twenty (20) acres all in fruit trees. So, I am really farming in the area and just that it is definitely doable. The land is great, the soil is great, and right now, it is just the seventy-five (75) acres is almost all just Christmas Berry just sitting there empty. There are junk cars there, people living in it. It is just being wasted. So, the alternative to have people that are willing to try and farm it, I do not see how that could be bad. Yes, it is going to be hurdles and farming is really hard, but we need an opportunity to at least start. I mean, it has taken thirty (30) years so far. We could drag this thing on for

another thirty (30) it looks like easily from just the twenty (20) minutes of this meeting. I think it is just important. I worked on farms for my first ten (10) to twelve (12) years of farming and my first chance to get into farming on my own was a mentor offering me a lease, a very reasonable lease, to start farming and since that, I have been able to get me foot in the door. I support my whole family. We were able to buy our own land in Moloa'a. It has just allowed me to make a living in farming. If you do not have access to cheap land, forget it. Land is so expensive out here. You will never ever make it. If you are a starting out farmer and you are buying land at fifty thousand dollars (\$50,000) an acre that you cannot even live on and you are just starting with no assets or savings account, it is really, really difficult. So, this is just an opportunity where the County, the community, and all of the organizations can give all of these young people a chance and establish people, anyone really, a chance to grow food instead of working the service industry or whatever the alternatives are. Not that working in the service industry is bad at all, but I think there is a sense of urgency for people that are young that want to grow healthy food or just grow food that...

Mr. Topenio: Three (3) minutes, Mr. Chair.

Mr. Smith: I think there should be a sense of urgency. It is important that this get passed and not dragged on for twenty (20) more years.

Chair Furfaro: Thank you. Questions? JoAnn.

Ms. Yukimura: Thank you very much for being here. How many acres do you farm?

Mr. Smith: I farm a total of about thirty (30), but ten (10) in Moloa'a and then twenty (20) are in Kilauea.

Ms. Yukimura: The twenty (20) acres that you lease, they were already prepared so to speak? I mean, they were cleared and they had been farmed for many years?

Mr. Smith: They had, but when I got it, it was not in good condition. It had been let go. So, it was a couple years to bring it up to speed.

Ms. Yukimura: Do you have irrigation?

Mr. Smith: Yes.

Ms. Yukimura: You do?

Mr. Smith: Yes.

Ms. Yukimura: Okay. Do you think you can farm without irrigation in that area because you are very close?

Mr. Smith: You can, yes. I do not think the water should be the ultimate hurdle to getting this project done. You could. You just have to be particular about what you grow. It is like what Ned was saying. You are not going to be growing lettuce in the summer time, but drought resistant plants and trees. If you have the energy and you are willing to make it happen, you can make it happen. You can fill your truck up. Farmers are resourceful. Get a fifty (50) gallon

water tank, fill your truck up, go in the middle of summer, and go water your plants one at a time, two (2) cups of water to keep them alive.

Ms. Yukimura: So, you grow what across the street from the agricultural park?

Mr. Smith: It is all fruit trees. So, it is a mix.

Ms. Yukimura: So, that is much easier to grow without irrigation than, like you said, greens or something like that? So, you are not stuck if you...

Mr. Smith: I mean it is not easier to grow without water. It is not easy to grow, but lettuce you are going to have to water every couple of days. I could not water my trees for a year. I am not going to be taking quality things to market, but yes, I could just leave my trees alone.

Ms. Yukimura: So, I just want to say that I really agree with you that there is an urgency and there has been an urgency for the last thirty (30) years.

Mr. Smith: I mean...

Chair Furfaro: She did not pose a question.

Mr. Smith: Yes, okay.

Chair Furfaro: You do not get your time extended.

Mr. Smith: Alright.

Chair Furfaro: You pose a question.

Ms. Yukimura: No, I truly understand.

Mr. Smith: Yes.

Ms. Yukimura: Thank you.

Chair Furfaro: Thank you for your testimony. We have another question for you.

Mr. Smith: Oh, yes.

Mr. Kagawa: Thank you for your testimony. What is the most profitable, or if you want to share it, if not, you do not have to. What is the most profitable fruits or vegetables that you grow?

Mr. Smith: Well...

Mr. Kagawa: What grows well over there?

Mr. Smith: My most profitable fruit...

Mr. Kagawa: What grows best in that area?

Mr. Smith: With the fruit trees, like I have avocado, lychees, and mangosteen. Mangosteen is the most profitable because it is just so rare and it takes twelve (12) years for the trees to be mature, but I mean, small plots like this, the key is just diversifying so you do not have all of your eggs in one (1) basket. It is just the learning curve of finding your market. There is going to be an incubator program with people getting quarter ($\frac{1}{4}$) acre plots. It is finding your markets, what you want to grow, and it is getting it to that market. It could be a number of things. If you get a really good report at the Farmers Market, you could just making a living at the Farmer's Markets easily.

Mr. Kagawa: Thank you.

Mr. Smith: Yes.

Mr. Kagawa: Thank you, Brad.

Chair Furfaro: JoAnn.

Ms. Yukimura: Are you a full-time farmer?

Mr. Smith: Yes.

Ms. Yukimura: What would you say, how much acreage is it advisable to have a full-time farmer operate successfully?

Mr. Smith: That is kind of hard to say. I think they are planning maybe quarter ($\frac{1}{4}$) incubator lots. You could make a living off quarter ($\frac{1}{4}$) acres. At that, you would need water to make a living off of it, but definitely. If you are going to work every square inch of that quarter ($\frac{1}{4}$) acre, yes, for sure.

Ms. Yukimura: Are you going to be one of the mentors?

Mr. Smith: I would be, yes, definitely.

Ms. Yukimura: Thank you very much.

Chair Furfaro: Thank you very much. Adam, if you can find your way to come up. There we go. Adam, I have a statement to make. To all of you in the audience, we have a group. Adam is going to speak and then I am going to ask Mr. Pacheko as an officer of Kīlauea Community Association if he wanted to say anything. Then we are going to break for another agenda item. I do not think we will be back to this at the earliest, it will be 2:30 p.m., maybe later than that. We have attorneys here and other topic agenda with people coming in from Honolulu. Adam, you have the floor.

ADAM ASQUITH: Thank you very much. My name is Adam Asquith. I have farmed on Kaua'i for fifteen (15) years now. I have changed farms five (5) times and I wonder why I have not made any money doing that. So, it is the pursuit of land and the security of the land that is the real limit for staring farmers much less trying to be a successful farmer. So, I am here to support farming in general. These people who are seeking a place to farm in this project in particular. Uncle Dave is always *'olu'olu* and even though he has pointed out that is had been

thirty (30) years, he did not really place the blame on the County or the developers. I would humbly point out that I think that the County does share some culpability in what has transpired in that thirty (30) years. That thirty (30) years represents a generation of our community. So, there has been a generation lost that has not had the opportunity to farm in Kīlauea. We all know what has happened to agricultural lands in that intervening thirty (30) years and the County has, not despite some efforts, has allowed the logarithmic escalation of land prices to the point where real farmers cannot purchase land and make a living. We have very, very few examples of that happening. So, I would argue that the County does have some responsibility here to help make this happen given the fact that in the larger picture, it really has not protected agricultural lands from that price escalation and therefore, farmers in our community from allowing like you did two (2) generations ago. We all know many, many family farms who made substantial livings off of affordable agricultural land. That is the big problem. Please find every opportunity you can to make this happen rather than seeking minor obstacles, which might or might not impact its success. With regard to the agricultural plans and the success or failure of this, I am reminded of the classical farmer joke about the after who won the lottery and when the press asked him what he was going to do now that he is all rich. He honestly answered, "Well, I guess I will just keep farming until the money runs out." Nobody goes into arming to get rich, and it is true.

(Mr. Kagawa was noted as not present.)

Mr. Asquith: Eight (8) out of ten (10) people who attempt to do this will not succeed, but my God, how many restaurants open and shut in Kapa'a on a weekly basis? It is just the nature of business, right? Farming is no different. Just because you can find, and I can help you find ten (10) things that is not in the plan. Please, find it in your capacity to allow it to go forward alright, please. Thank you.

Chair Furfaro:

Thank you, Adam. JoAnn.

Ms. Yukimura: A successful agricultural park is what I have been working for years. So, I want to see that happen and below those questions is this desire. Adam, what kind of land tenure do you think should be given to a farmer because you said you have been moving through five (5) farms? What sort of length of time?

Mr. Asquith: A minimum of something like five (5) to ten (10) years because if you go to the agencies like National Resource Conservation Service (NRCS) to look to request for money, they want to see some kind of five (5) to ten (10) year tenureship on the land before they will loan you money. For example, if you are going to plant any kind of long-term crop you need something in that term.

Ms. Yukimura:

Really, five (5) or ten (10) years is enough?

Mr. Asquith: No, but that is not exactly...you asked what I was recommending, right? That would at least allow you to make a commitment. Let me back up and say that what we really should be supporting here and working as hard as we can is for our farmers to own their land and be able to pay for that land off of the production on that land, given that we do not have, that is not a reality right now. Some type of five (5) to ten (10) years guarantee at that land will allow them to jump in.

Ms. Yukimura: I am aware of agricultural parks around the State where farmers have a lease and they are not growing food and sometimes it is bear, but the people have not been able to get them off of the land. So, maybe they are not even farmers. So, those are going to be some of the management issues that have to be addresses.

Mr. Asquith: Well, let us not start throwing rocks in a glass house with regard to who is farming and not farming on agricultural lands that are approved by the County. Let me tell you right now, I put far more trust...

Chair Furfaro: Excuse me, Adam, you do not need to go there.

Mr. Asquith: No, but I am just...

Chair Furfaro: No, you do not need to go there.

Mr. Asquith: What I am trying to get at Jay, is...

Chair Furfaro: No, I want to tell you, that was not a fairly posed question. That was some assumption. You do not need to go there.

Ms. Yukimura: I am sorry. I do not even know what you are referring to, but I am serious about how you can manage the land so that good farmers can get it and stay on it. That is what I am asking and I just know from experiences elsewhere that it is not that easy.

Mr. Asquith: I am sure it is not, but that is one (1) of hundreds of details that these folks will work out. Let me just say that it is the limitless analysis, details, and planning that will kill a project like this. The farming is difficult enough if you allow them to get on the land, right?

Ms. Yukimura: Okay.

Mr. Asquith: No extent of further planning and details will improve the success of whoever gets on the land.

Ms. Yukimura: Okay. Thank you, Adam. I want to say that it is those kinds of details that will make the agricultural park a success. So, thank you.

Chair Furfaro: Adam, thank you for your testimony.

Mr. Asquith: Thank you.

Chair Furfaro: Gary, from the Kilauea Community Association, is there anything you want to add here before we break?

GARY PACHEKO: Thank you, Jay, Councilmembers. I was on the original plan for this acreage. I still have the records of the original. We were down to the last two (2) people to sign their agreements when the thing got closed down. We were very disappointed. Bill Spitz and Jack Gushiken, there were like three (3) or five (5) of us on the Committee and we were meeting and we were ready to finalize the thing when the deal was pulled off. At that time, we had the water

from Kīlauea Stone Dam. There was an easement through the old plantation ditch that the water was to be brought down for free, but because the things was canned, they sold off the land where the free water and pipe to service this area was pulled out. That is why the problem is now with water.

(Mr. Kagawa was noted as present.)

Mr. Pacheko: If it happened when we originally started, this would not be a problem and we would have a productive farm area, but due to the fact that is the past. Let us look forward and push this thing and get this farm going. It will take some time to clear the land because of all of the worth that is there, but do not stop it now because you have the energy of the young people that are willing to try and get this thing going because we know the need of growing our own fruits and vegetables here. What better place to do it than in the famous Kīlauea? I have been an active member in the North Shore and I am one hundred fifty percent (150%) in the back of this. I want to ask the Council to please pass this because this is plus for Kīlauea. Kīlauea is the leading community that other communities look up to us because of our involvement in the community in getting things done. Thank you.

Chair Furfaro: Thank you. Any questions for Mr. Pacheko?
No?

Mr. Pacheko: Thank you.

Chair Furfaro: Gary, you will be our last testifier for this time.

There being no further testimony, the meeting was called back to order, and proceeded as follows:

(Mr. Bynum was noted as present.)

Chair Furfaro: I am going to make a couple of announcements here. First of all, for those of you that have not been able to speak, it is first of all my decision and this is to the staff, we will probably only have forty-five (45) minute lunch break today. I see us now needing to go into a Special Counsel consultation with the legal dealing with our Audit Department. When they get out of that session, we will go to lunch at 12:45 pm. to 1:30 p.m. At 1:30 p.m. or so we have the owners with a presentation on an update of Coco Palms. So, I do not think that we would be able to get back to this item until about 2:30 p.m. So, I think you have heard from around the table, there are many Councilmembers including myself that we look forward to this happening and we understand there may be some risks, but I think we are ready to...like I used to say in high school, "we might be willing to chance 'em." I would like to just tell you, I am sorry. We need to do this because tomorrow we start our budget and we have to get a lot of other things out. I think the earliest we will be back is 2:30 p.m. on this item. Then, at 3:00 p.m. we have the opposite problem. We have too much water in a place in Kōloa that we have to look at. Maybe we could get some water from there. That is what we need to do. So, Mr. Hooser, I will give you the floor.

Mr. Hooser: Just real briefly, Chair. Since we are ending this segment and we are going to be going into Executive Session and then going to

lunch, there are many people who may not be here when we come back even though they will have the opportunity, I am assuming to testify if they would like...

Chair Furfaro:

They will.

Mr. Hooser: I think from the public's perspective, and the public is here, both the public and the television. Based on your request I think many of us have not been asking questions to allow more and more speakers to speak. I feel frustrated by that to a certain extent and not because of the nature of the questions coming out of the Council have been more critical than myself if I was going to be asking questions, but out a respect for you and the process I have not done that. So, I want to make sure the community knows that just because I am not asking questions and many here, that we are interested. I speak for myself. I support this project one hundred percent (100%) and trust that the community is smart enough, committed enough, dedicated enough, and has the experience to make this thing work. I have not had the opportunity and chose not to, again, we have a busy agenda, to express that along the way, but I just want express that now in conclusion so that people do not leave here thinking that well, gee, we have not asked a question or talked or say anything, so we may not care. I just wanted to make those remarks.

Chair Furfaro: I think I tried to point that out at the beginning. We will all have our time when the Office of Economic Development is up to make the presentation and we can, for a lack of another term, drill down on some questions. As I started in the beginning, I isolated this time because people wanted to give testimony and the fact of the matter is had already committed to Coco Palms and the legal department on all of the other agendas. We will be here to prepare to Council to ask whatever questions they want of the project. I can assure you.

Mr. Rapozo:

I have a quick question, Mr. Chair.

Chair Furfaro:

Mr. Rapozo.

Mr. Rapozo: I am just looking at your order of the day, the 3:00 p.m. street drainage issue, are we expecting any?

Chair Furfaro:

We are expecting Engineering.

Mr. Rapozo: Just from the County though? You are not expecting anybody from off-island or whatever?

Chair Furfaro:

No.

Mr. Rapozo: I guess I am not on the Public Work / Parks & Recreation Committee, but if there is a way to just refer this to the Committee for next week we can have the discussion there. I just feel for a lot of these people that came from the North Shore and drove all of this way and then if we come back at 2:30 p.m. within two (2) or three (3) speakers, we will be back in another session. So, I would just offer that suggestion that we refer that and utilize that time to come back to this issue.

Chair Furfaro: Well, I tell you how I plan to do that. I have already spoken to the people that are encouraging the Public Works Department to

work on that drainage, they are entitled to give some testimony, but if the Council chooses to immediately to refer that item to a future Public Works / Parks & Recreation piece, well that can happen as long as those people get an opportunity for something that was on the agenda. I am more than flexible and I am trying to be as fair as I can, but we are pinched between the budget starting tomorrow and Money Bills that need to be on the agenda for the purpose of getting into the budget discussion. Yes?

Ms. Yukimura: It may be that those people who want to testify on the Public Works issue might be willing to come back next week in Committee.

Chair Furfaro: Again, that is what I just said.

Ms. Yukimura: Oh, okay.

Chair Furfaro: I have spoken to them. I think as long as I know someone here can refer that item to a Committee and they can talk, I think they would be satisfied with that. Then we can...

Ms. Yukimura: Oh, at the Committee.

Chair Furfaro: So, at the same time, I do not want to sound like I am an advocate for one particular item on the agenda. Mr. Kagawa.

Mr. Kagawa: Yes. Since we are in a crunch period as far as trying to make sure that the people showed up at least hear the final decision, I am willing to actually call for the question if members feel like we can do that. I think we have all been briefed individually. We all basically are in support of approval. We feel that the County has had enough time in trying to work it out, but it appears that in this special, unique case, that the community perhaps is the stronger option as far as getting some progress done. I am willing to state my approval now if the Committee feels that way. We can have our other questions answered at a later update as they move along the process. I am willing to give my approval. I do not see the County being a better option in taking this issue by itself. Thank you.

Chair Furfaro: Members, is there any more discussion on that subject? Mr. Bynum and then Mr. Rapozo.

Mr. Bynum: I will try to be as brief as I can. I want to share what Councilmember Hooser was saying, that I know this issue really well I worked for the Baptiste Administration when they moved to acquire this land. These folks in the audience are my mentors. I had the wonderful opportunity to work directly in the Kilauea community quite extensively for a number of years. I am ready to vote on this. I am supporting it. Our good Department under George, this collaborative effort. I could go into all of the munition details, which we will because this is just the beginning, right? We will do all of that. Kilauea is a wonderful community. They are here in force. We have a strong Economic Development Director who is encouraging us to move in this direction. I am prepared.

Chair Furfaro: Was that you that wanted to speak again, Mr. Rapozo?

Mr. Rapozo: Yes, thank you, Mr. Chair. I would agree with Mr. Kagawa, that nothing that is going to be said later today is going to change my mind. I know Mr. Sproat, I believe it was Mr. Sproat that said earlier that the delays really was not because of the County. It was because of the developer, but certificates of occupancy were issued by the County. That is where we screwed up. When we issued the certificates to go ahead and complete your development without the conditions being met, that is the County's fault not the farmer's fault. That was out fault. Then someone else said, I believe it was Mr. Yadao, about the promise. Now we have to deliver on the promise and that is the opportunity. I know JoAnn talked about the requirement to ask a lot of questions and over the years she has asked a lot of questions, but maybe we are just asking the wrong people. Maybe we asked the wrong questions. That is why thirty (30) years later, we are still here. What hit me was when Adam said we lost a...I think it was Adam that said, we lost a generation. That hit me today I never thought of that, but that is true. Now we put the ball in the farmer's court. I have the ultimate trust that the right will be done. So, I am prepared to vote right now. Thank you.

Chair Furfaro: Mr. Hooser.

Mr. Hooser: I am prepared to vote right now also, Chair.

Chair Furfaro: I will keep my comments to the point until somebody actually makes a motion because I want to point a few things.

Mr. Kagawa moved to approve C 2014-96, seconded by Mr. Hooser.

Chair Furfaro: There was a motion made and a second. Is that correct earlier? It was at the start? Any further discussion? JoAnn.

Ms. Yukimura: Thank you. This is such a difficult thing for me to do. I want to state up front that I am going to be voting for this, but I want you to know why I am asking the questions. I mean, I worked with the Kilauea Agricultural Association for many, many years. I represented David and Linda as a legal aid attorney against the agricultural subdivision of land. We fought the proposals for a convention center right about Kauapea Beach. We also fought against a proposal for a golf course and condominium over there. We worked. We tried to have Kilauea Agronomics donate a one hundred (100) acre agricultural park for Kilauea. I married a farmer who was part of the Kilauea Agricultural Association who worked for many years with Johnny Akana. I was involved with this Crater Hill effort, so I yearned to see an agricultural park in Kilauea for many, many years. I have personally worked on this and also actually worked to expand the Kilauea National Wildlife Refuge and add the Crater Hill piece to it and Mokule'ia Point, which was going to be a Country estate for a nuclear physicist. We went through all of this. I also saw young farmers in Molokai, Papaya Coop with all of their energy and passion wanting to succeed in farming and accepted eighty thousand dollars (\$80,000) from the State and they no longer exist. I was the one who actually put money in for an island-wide agricultural park system so that we could have agricultural lands available to farmers throughout the island.

The reason that I am asking these questions is because I know that you have to have answers to them in order to succeed. When we gave the Stewardship Agreement to Kaneioliouma Archeological Park, Rupert Rowe and his people when they came before us, they were able to answer our questions, which I believe, was a

part of our job as stewards of this public land to ask and have answers to. So, that is why I am asking these questions. I also hear the commitment and the passion in the community to work on this. I also have real hope in this new generation that is stepping up to the plate. So, I am going to support that. I want to support that, but I have a lot of concerns and I am going to put my trust in all of you that you will take this responsibility very seriously. I have questions about governance because I have seen organizations fall apart, not being able to make the decisions, and then become fractionalized and start fighting each other. So, those ground rules, how we are going to operate together, a business plan, and a financial plan. I do not believe they are unnecessarily picky questions to ask. In fact, if you want to accomplish what you want to accomplish, you will be asking these questions to yourselves. I mean this as a celebration. This is to a certain extent, a consummation of dreams for many years, but it not really a consummation. It is going to take so much hard work, cooperation, and effort...

JADE K. FOUNTAIN-TANIGAWA, Deputy County Clerk: Five (5) minutes.

Ms. Yukimura: I am going to vote for this in faith that you will all rise to the occasion and that we will actually have a very joyous celebration when the agricultural park is going to be dedicated. You are going to be the developers. This is a developer's job. You are not only going to be the farmers, you are going to have to figure out...

Chair Furfaro: JoAnn, they waved me. That was your five (5) minutes for discussion.

Ms. Yukimura: Thank you. I look forward to the celebration when the agricultural park will be developed, blessed, and that we will see farmers growing food for our people for many, many years.

Chair Furfaro: Thank you, JoAnn. Before I go any further, and I want to share this. This is a precedence that I personally as the Chairman have to take responsibility for before we go any further because these are our Rules and we are guided by Rules and they are very old Rules. There are three (3) people who have signed up, but who have not been able to speak. May I ask if they are willing to waive their signup to speak? Could I see the hands? There is one (1), there is two (2), and there is somebody that signed up. Is there anybody who actually, I have their name here and wants to speak? Okay. Thank you.

The following members of the public withdrew their opportunity to provide testimony:

- L'Hote Yoshito
- Josephine Bonaparte
- Alvin Castelo

Chair Furfaro: I am sorry. Those are the Rules and enter that into the record. I will come back to you, Mr. Kagawa.

Mr. Kagawa: Thank you. Again, I want to thank Councilmembers for having the decision made now and to let the community know that we are behind you one hundred percent (100%) even through tough times that may come up. I think our community wants to see agriculture improved and this is

a perfect opportunity to be a model for Kaua'i. I not only see this happening at Kīlauea. If we can make this happen in Kīlauea, we can do it on the West Side and we can diversify, grow some food for our residents, and help some people with new careers that are good for the island. So, I see this also as a celebration. I must honestly say that I did not know that the agricultural park was by my favorite fishing spot. Rock Quarry, is where I love to go and fish. I live on the West Side all my life, but I go where there is fish and Rock Quarry was pretty good to me. I was kind of dismayed when I saw all of the development down there, seeing those nice beautiful homes. I must say, really nice homes, but I kind of thought that would those homes at some point block off our access down to that favorite fishing spot, not only for me. I see a lot of lead and what have you on the rocks. It is a lot of people's fishing spot. I am glad to see that with that development, at least we might have something good there for the people of Kīlauea and Kaua'i. I will be casting a vote for support. Thank you.

Chair Furfaro:

Mr. Chock.

Mr. Chock: I will be as quick as possible. I know time is running out and everybody is taking their time. My first informal meeting here at Council was to sit in the agricultural park discussion and when they ended I said, "Mr. Costa, what can we do to make sure this ends in the community's hands? It has to go there. We have been waiting too long for this to occur." Uncle Walter from Moloka'i would said that Moloka'i is *āina momona*. Well, I believe that Kaua'i is the gatekeeper of the privilege because of the water resource that we have and it is just a matter of management, which brings me to where Councilmember Yukimura's concerns are which, I think is a valid concern and we need to continue to work together at these benchmarks and just keep us in the loop in the communication of this so that we can make sure that this is a thriving success. When it comes down to it, it is about trust and I am willing to cast my vote in terms of that trust. *Mahalo*.

Chair Furfaro:

Thank you. Mr. Bynum.

Mr. Bynum: This sea cliff subdivision was a watershed for Kaua'i in so many ways and not just this agricultural park, but also about agricultural subdivisions and corporate money, who wants to come here, how much strength we have as a community, and how sophisticated we are to fight back those things. Boy, I could go on and on about just this one (1) subdivision. What I want to focus on is Auntie Lynn, David, Rodney, and Mr. Pacheko who have been mentors to me about how you act in a community, how you work together in a community, and I wanted to thank all of you. I agree with Councilmember Chock and JoAnn, as always is looking at all of the issues and details and that is very valuable, but it is time for us to act. There has been many, many talks and there is not a perfect plan here, there is not a perfect solution, but there is a community collaborative effort with the County and when we do that well, that is when our community is at our best. So, good luck and thank you very much.

Chair Furfaro: May I speak now? First of all, I want to say that it is obvious that everyone that is here feels that this park is beneficial for all, but I want to let you know as the elected Administrator of the Council, I have to be cognizant of the fact that this is a very different precedent than what we are used to. To vote on a procedural item without completing all of the particular pieces and therefore, I had to ask those that signed up if they were willing to waive their right to speak, whatever testimony they give pro or not. We have that documented in the

record. I used to feel that you surround yourself with really good people, then you give them the authority and the autonomy to do their job, and they will do a good one. I believe that this is true of this community and this park. I also have to tell you, I am looking for an acknowledgment from the legal counsel for the County and the Economic Director to know, I will support this today, but knowing in six (6) months I am going to have an update and knowing in six (6) months, we are going to actually have something documented that tells us the question I asked Keone. How often will you be giving us an update? We have not concluded that. I want to make sure we understand. As the Administrator of the Council, and three (3) times elected by the whole majority to be the leader, I want to make sure we understand Economic Development and the County Attorney's Office, I am looking for some amendment in six (6) months that tells us how the reporting system is to the Council. Could I have you come up Mauna Kea for that?

There being no objections, the rules were suspended.

MAUNA KEA TRASK, Second Deputy County Attorney: *Aloha Chair.*
For the record, Second Deputy County Attorney, Mauna Kea Trask.

Chair Furfaro: Mauna Kea, first I want to tell you, all of us have seen the document and George's presentation. So, we understand the guts and so on. The piece that is missing is some understanding about updates.

Mr. Trask: Yes, Chair...

Chair Furfaro: How do we fix that?

Mr. Trask: Under the terms of the Stewardship Agreement as you are aware, if I can just have a second to find it. This is on page 5, Stewards' responsibilities, paragraph four. "The Stewards shall keep a logbook/journal of all activities conducted at the site to be available upon request."

Chair Furfaro: That satisfies me. "Upon request."

Mr. Trask: I just wanted to add one (1) more thing. On page 8 under Checks to Ensure Proper Stewardship. "OED, or their representative, will make two (2) field checks per year to see that proper stewardship is being done," et cetera. So, we can provide the Council copies of the results of those inspections at that time.

Chair Furfaro: Okay, do not dig more than that. That is my only question, okay?

Mr. Trask: You got it.

Chair Furfaro: I do not want to go on and start looking at all of the legal parts because I am getting hungry and I am diabetic. JoAnn.

Ms. Yukimura: Yes. I want to ask that there also be developed an addendum or something that lays out the benchmarks for performance, clearing of the lot, development of an operations plan, and a financials plan.

Chair Furfaro: Is that understood Mauna Kea?

Mr. Trask: Yes.

Ms. Yukimura: Thank you.

Chair Furfaro: Thank you very much for coming up.

Mr. Trask: Thank you.

There being no objections, the meeting was called back to order, and proceed as follows:

Chair Furfaro: On that note, I hope everybody understands at the end of the day, administratively, I am the point person for this body. So, I am prepared now to vote. We will do a roll call vote if we may. Roll call, please.

The motion to approve C 2014-96 was then put, and carried by the following vote:

FOR ADOPTION:	Bynum, Chock, Hooser, Kagawa, Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

Chair Furfaro: 7:0. Thank you very much. May I now ask others if you could leave quietly because I have to call Mauna Kea back up for the next item and from a housekeeping standpoint, you folks, I am going to be recused from the next item, so make sure you keep it within one (1) hour so we can have a lunch break and we push everything back thirty (30) minutes. Thank you everyone. Mauna Kea, if you can come up. Tim, we are continuing with business. Someone from the County Attorney's Office was coming up? Mr. Hall. For the record, please note that I have recused myself.

(Council Chair Furfaro was noted as recused for ES-712 and ES-713.)

Council Chair Furfaro relinquished chairmanship to Mr. Chock.

Mr. Chock: For the record, County Attorney Stephen Hall is here to introduce the Executive Session.

There being no objections ES-712 and ES-713 were taken out of order.

There being no objections, the rules were suspended.

STEPHEN F. HALL, Deputy County Attorney: Yes, good afternoon. Stephen Hall, Office of the County Attorney. I have items 1 and 2 on the Executive Session list.

EXECUTIVE SESSIONS:

ES-712 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and (8) and Kaua'i County Charter Section 3.07(E), the Office of the

County Attorney, requests an Executive Session with the Council, to provide the Council with a briefing and for settlement authority as it relates to the investigation of personnel matters involving the Office of the County Auditor, and related matters (including Ernesto G. Pasion vs. County of Kaua'i, et al., Civil No. 13-00676 ACK RLP (U.S. District Court)). This briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-713 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and (8) and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney, requests an Executive Session with the Council, to provide the Council with a briefing as it relates to the investigation of personnel matters involving the Office of the County Auditor, and related matters (including Ernesto G. Pasion vs. County of Kaua'i, et al., Civil No. 13-00676 ACK RLP (U.S. District Court)). This briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

Mr. Chock: Thank you.

Mr. Kagawa moved to convene in Executive Session for ES-712 and ES-713, seconded by Ms. Yukimura.

Mr. Chock: Good. We have a motion to go into Executive Session. Councilmembers, any questions of County Attorney, Stephen Hall? If not, we will call for public testimony. Do we have anyone on the list?

Ms. Fountain-Tanigawa: We now have two (2) people who registered to speak. The first speaker is Sherwood Hara, followed by Glenn Mickens.

Mr. Chock: So, we have two (2) speakers. I intend to follow the same track and follow suit with Council Chair because of the intense schedule. So, we will allow for three (3) each speaker.

Ms. Fountain-Tanigawa: Vice Chair Chock, Mr. Hara is not present. So, we could just jump to Glenn Mickens.

Mr. Chock: Okay. Mr. Mickens, you are the first speaker.

Mr. Mickens: Thank you, Mason. For the record, Glenn Mickens. I am going to give you a little historical record of the way I believe this thing has played out along with the Executive Sessions for you folks and the camera. This Council has held twenty-four (24) Executive Sessions regarding our Auditor. Ernie Pasion's audit of fuel costs consumptions and related matters. Three (3) more on today's agenda will bring this total to an unprecedented twenty-seven (27). There is something very, very wrong with our system when those in power must go behind closed doors to decide a matter that should never have been started in the first place. From the beginning of this convoluted fiasco, seven (7) Councilmembers unanimously hired Ernie Pasion to be to be our very first County Auditor, a position mandated by our Charter. His qualifications were impeccable and superior to those of the other two (2) finalists candidates vying for the job. One of them was even a Certified Public Accountant (CPA) that worked for the Security Exchange Commission (SEC). Mr. Pasion put together a group of

people who successfully did seven (7) audits and did them so efficiently that the results of all but one (1) was agreed to but the auditees. Ernie does all of this audits with his Yellow Book as his guideline, guidelines followed by all government auditors. He has fought to stay completely neutral in all of this audits and whatever failure, fault, or positive is uncovered, it is done to make better the system more efficient. Regretfully, or should I say gratefully his fuel cost consumption audit uncovered an irregularity and the alleged misuse of a County gas card by our Mayor. Once this audit came to light, our Auditor's budget was cut by an astounding thirty-two percent (32%), three (3) times that of any other budget.

(Mr. Hooser was noted as not present.)

Mr. Mickens: This huge reduction was severe enough to cripple the motive (MO) by which our Auditor had been doing his job. It does not take a legal person to connect the dots to figure out that retribution had taken place as payback for what the audit had uncovered. It is irresponsible that any consequence of the gas (inaudible) arising from the Fuel Audit should fall on the Auditor who was merely performing his authorized function. Instead, we should look to the Mayor and the Council to perform their duties and enforce the clearly applicable provisions of the law. This whole sorted gas (inaudible) mess has the potential in our Hawai'i Revised Statutes (HRS) 78-9 to remove our Mayor from office, but again, Mr. Pasion did not orchestrate what is happening as his contractor did his job and now the chips must fall where they may. How terribly regrettable that Mr. Pasion must now be in a legal battle for his job and financial well-being when he did his job, a job that was allotted by the Association of Local Government Auditors. May justice prevail and may Ernie continue on...

Ms. Fountain-Tanigawa: Three (3) minutes.

(Mr. Hooser was noted as present.)

Mr. Chock: Three (3) minutes there, Mr. Mickens.

Mr. Mickens: ...untold money. I am...

Mr. Chock: Can you wrap it up?

Mr. Mickens: Yes.

Mr. Chock: Thank you.

Mr. Mickens: And may we get a County manager who can keep this debacle from ever happening again. The cost for this issue alone went in at hundreds of thousands of dollars. Thank you, Mason.

Mr. Chock: Thank you very much. Anyone else?

Ms. Fountain-Tanigawa: We do not have any...

Mr. Chock: No one else schedule?

Ms. Fountain-Tanigawa: Yes. No one else registered.

Mr. Chock: Anyone else would like to comment on this?
Shaylene. You have three (3) minutes as well.

SHAYLENE ISERI: For clarification, I did sign up for C 2014-93 and it appears that this is the concurrent Executive Session relative to that item. If you are going to be discussing motions and fees, then this would be the opportune time for me to talk.

Mr. Chock: Can you repeat which one you said you wanted to...

Ms. Iseri: C 2014-93.

Mr. Chock: Oh, okay.

Ms. Iseri: I do not see a concurrent Executive Session for the request for expenditures of the Special Counsel fees, but it appears that this would be the concurrent item that you will be discussing the investigation as it relates to this Federal case.

Mr. Rapozo: That is the one. That is the one, Shay.

Ms. Iseri: So it is?

Mr. Chock: Do you want to speak on this one? I just wanted to confirm with the Clerk.

Mr. Rapozo: ES-713 and C 2014-93 are concurrent.

Ms. Iseri: Okay. It has different items. One speaks about the Special Counsel fee of sixty-five thousand dollars (\$65,000) and that is noticeably absent from the ES-713 item, but it is on the same item? Alright. So, if I could start now.

Mr. Chock: Yes.

Ms. Iseri: Okay. Good morning I think or it may afternoon at this point. I, Shaylene Iseri, speaking on behalf of myself and the people of Kaua'i, I would state that I vehemently object to any authorization to expend any type of fund in this Federal case involving Pasion versus County of Kaua'i. This is the Federal case. As you recall at the last couple of weeks that I had testified, the County as represented by Mr. Sato as well as the County Attorney, Mr. Castillo, representing Chair Furfaro, they were issued sanctions for filing a frivolous motion for trying to remove this case from the State Court to the Federal Court. The only cases that are pending here is the Federal Court case. Therefore, all of the expenses relate to the County filing a frivolous motion and incurring costs where the Judge found that it was totally unreasonable for these attorneys because they ignored binding Supreme Court and Ninth Circuit Court precedent, they were presented with multiple opportunities to review the controlling case law, and to stipulate to the plaintiff's request to keep it in State Court. Despite that, the defendant's actions resulted in dealing the timely litigation of this case in the proper forum as well as increase costs to the plaintiff and the Court. What I understand from looking at the Federal Court docket is that the plaintiff submitted attorney's fees of twelve thousand five hundred twenty-five dollars (\$12,525) as a

result of their incompetence in filing a frivolous motion in Federal Court. I believe that the taxpayers should not bear the burden of paying these costs that were incurred by two (2) attorneys who totally ignored controlling case law. So, this twelve thousand dollars (\$12,000) if that is the case, I believe Mr. Bennett had put in for hours of forty-nine point seven (49.7) hours in preparing this motion that the Court found that was totally frivolous. There is now, another motion in opposition to the filing of the fees that had occurred on March 24th. So, now we are incurring more fees by objecting to the fee schedules that was provided by the plaintiff's attorneys of which the Court ordered the County Attorneys to pay. It appears it is not clear from that motion what the arguments are except that Mr. Bennett should be only charged four hundred dollars (\$400) an hour, but he is asking for four hundred fifty dollars (\$450) and hour, and for his Legal Assistant is two hundred thirty dollars (\$230) that they are asking. The County is saying, "No, we should pay only one hundred forty-five dollars (\$145) to one hundred sixty-five dollars (\$165). It seems like paying all these pennies that we are talking about and we are expending just on the motion, twelve thousand dollars (\$12,000) and now we are asking for sixty-five thousand dollars (\$65,000) for what when we should not have even been in Federal Court? It was very clear from the Court's indication that all of the claims arose in State Court. There was absolutely no reference to Federal law and yet the County...

(Mr. Kagawa was noted as not present.)

Ms. Fountain-Tanigawa: Three (3) minutes.

Ms. Iseri: ...still went ahead...

Mr. Chock: Three (3) minutes, right?

Ms. Iseri: ...and filed this frivolous motion. So, again, I object to any fees being paid on any Federal claims, not the fees paid to Special Counsel nor any fees that we have to pay for the plaintiffs. That cost should be incurred by the incompetent and arrogance of the people that created the litigation, which is the County Attorney and Mr. Sato.

Mr. Chock: Thank you. Anyone else would like to speak on this item at this time? Seeing none...

Mr. Rapozo: I have a question.

Mr. Chock: Oh, you have a question?

Mr. Rapozo: No, for the County Attorney actually.

Mr. Chock: County Attorney?

Mr. Rapozo: For either Mr. Sato or...

Mr. Chock: I do not see Mr. Sato.

Mr. Rapozo: Or anyone.

Mr. Hall: Good afternoon again. Stephen Hall, Deputy County Attorney.

Mr. Rapozo: Thank you.

Mr. Rapozo: I do remember reading the ruling from the Court that said that the case should not be in Federal Court, that in fact, it needs to go back to State Court.

(Mr. Kagawa was noted as present.)

Mr. Hall: Correct.

Mr. Rapozo: My question is, is Civil No. 13-00676, is that still a pending case?

Mr. Hall: Yes. The Federal Magistrate Judge retained jurisdiction solely for the discussion on fees and then it will be returning to State Court.

Mr. Rapozo: So, this request, and the only reason I bring this up is just for the legality of the posting. I want to make sure we posted properly.

Mr. Hall: Yes.

Mr. Rapozo: So, on C 2014-93 which according to my notes on the agenda, is the companion to ES-713. The sixty-five thousand dollars (\$65,000) is just legal fees in that Federal motion? Is that what...

Mr. Hall: No, well...okay. Yes, the two (2) posts correlate. So, you are correct in that. The sixty-five thousand dollars (\$65,000) that we are requesting are not pertaining specifically to that motion. We can discuss this in more detail. I have got some breakdowns for you all that...

Mr. Rapozo: I just want to make sure that the posting is valid, that because it references a Federal Court case, which I read...

Mr. Hall: Right, technically it is still in Federal Court until that issue of fees on the motion that Ms. Iseri was just discussing, until that is resolved, it will be in Federal Court. Once that is resolved, it will come back to State Court and then there will be a different case number associated.

Mr. Rapozo: But the original case was not filed in State Court?

Mr. Hall: The original case was filed in State Court by the plaintiff.

Mr. Rapozo: And that case, what is the status of that case?

Mr. Hall: That case is currently in Federal Court.

Mr. Rapozo: So, it does not stay at State Court?

Mr. Hall: No.

Mr. Rapozo: I guess the motion was made to transfer it to Federal Court?

Mr. Hall: It transfers to Federal Court, exactly, and then when the appropriate order is given, it will transfer back to State Court.

Mr. Rapozo: And that has not been given yet?

Mr. Hall: Correct.

Mr. Rapozo: Okay. Thank you.

Mr. Chock: Any more questions? Hearing none, we have a motion to move into Executive Session. Roll call for that. Oh, you have something? Ken. We have one (1) more speaker.

KEN TAYLOR: Chair and members of the Council, my name is Ken Taylor. First of all, I am very frustrated by this whole process because you folks have over the last year have created some real problems for the County taxpayers because of all of this frivolous activity in reference to the Auditor. The Auditor was put in place to do a job. He has done quite a job. To this date, very little of this information has been on the agenda for discussion. You folks sit here as the purse string holders for the County. The documents that have been produced by the Auditor was to show where improvements could be made and money saved in the operations of the County. For whatever reason, I do not know, you have elected not to have these items on the agenda for full discussion and recommendations to take these matters forward and save the taxpayers money. Now, I see the Mayor looking at raises four million dollars (\$4,000,000) in salaries and looking at other increases in rates, and yet, we have not even taken the opportunity to save where we have the opportunity to do so. That is very disturbing. Yesterday I sent an article out that was in reference to a Mayor's problem back on the East Coast and the Federal Bureau of Investigation (FBI) went in and did an investigation and the Mayor has resigned. I am asking, will it take the FBI to solve Kaua'i's Mayor's problem with HRS 78-9? Again, an issue that you have an obligation to the community to deal with. You have not even put it on the agenda for discussion and I am very disturbed. Will we get free National news of bringing Kaua'i's ethical and moral issues to the world? Will it not be better for Mayor Carvalho to admit that he made a mistake take the high road, and do what HRS 78-9 requires and step down or will you folks step up to the plate and do what you are supposed to do?

Ms. Fountain-Tanigawa: Three (3) minutes.

Mr. Chock: Three (3) minutes, Ken.

Mr. Taylor: Investigate this issue as it is written. County Charter 3.17 gives you the right to perform investigations. By not doing this, you are showing that your ethical and moral compass is not in good working order and maybe that you are not fit to hold office. When you took the oath of office you swore to uphold the United States Constitution...

Mr. Chock: Can you summarize it please, Mr. Taylor?
Mahalo.

Mr. Taylor: I will be finished here in a second. You took the oath of office to uphold the United States Constitution, the State Constitution, and the County Charter. These allegations and behaviors are inexcusable and cannot be tolerated. So, I hope in the near future these documents are put on the agenda for the full discussion and the recommendation and that you move forward with an investigation into HRS 78-9. Thank you.

Mr. Chock: Thank you. Do you have a question Tim, for Ken?

Mr. Bynum: Thank you for your testimony, Ken. I do not understand your contention that no action has been taken on the audits. I am aware of dozens of responses to the audits there were responded where the County has made changes. I am curious, where your contention is that we have not adopted any audit recommendations since the Auditor has been in here?

Mr. Taylor: I guess if you could show me on the agendas from the past where each of these items have been agenized, I would appreciate it.

Mr. Bynum: Okay. Then, one (1) other question. This matter that is before us today, do you know how this arrived on the Council's agenda? How did this come to be an agenda item, do you know?

Mr. Taylor: I am not privileged to that information, no.

Mr. Bynum: Okay. No one on this Council initiated any agenda items related to the Auditor. We are responding to personnel matters. We are doing our responsibility as Councilmembers. So, I just wanted to make that point.

Mr. Chock: No question then?

Mr. Bynum: Well, I asked a question and he did not answer.

Mr. Chock: Thank you. Anyone else would like to speak? Of course, Mr. Rosa, please come up.

Mr. Rosa: Members of the Council, good afternoon. For the record, Joe Rosa. In a matter of four (4) days, this thing has been on this agenda for a year and after twenty-four (24) Executive Sessions still no decision. The Auditor went through a suspension without any just cause, it was noted in the papers and everything else, and yet, there is no decision by this body. You people are people with integrity and this all came about through the false information you got from the person that should be advising the Council. It is high time that when people cannot do the work and give you the right information, start to cause all of this kind of trouble, and a lot of time not here, the Chair says he hears a lot of hearsay, but no evidence. So, it starts from within the organization, the Committee of this whole County, from the top to the Council. So, it is high time that you people get your information straight so that this kind of things do not get caused, all of these liabilities. It is high time. Some of these audits have been done and I just heard it says that they did improvements, but I still hear about the gas cards coming out by audits yet. So, has it been corrected? No. Why? These audits are not being made public and has not been thought out here by the Council itself so

that it can be made known because it is a public record and it had to be printed with the okay from the body. So, after the body okayed the audits, it was printed in the booklet forms that Mr. Ken Taylor was showing you people. So, it is a legal document. So, why not throw it out here in the Council and make it known to the public and let them see where all the faults are, and those people responsible for it, well, if they have to say goodbye, they will have to say goodbye and step out gracefully when they have the chance to step out if there are irregularities. The way it seems, there is. If not, it would not be this kind of a problem that has been hanging on for nearly a year. So, with that...

Ms. Fountain-Tanigawa: Three (3) minutes.

Mr. Rosa: I leave you with that thought. Thank you.

Mr. Chock: Anyone else would like to speak on the Executive Session requests?

There being no further testimony, the meeting was called to order, and proceeded as follows:

Mr. Chock: We have a motion on the table. We are going to go to roll call for this item.

The motion to convene in Executive Session for ES-712 was then put, and carried by the following vote:

FOR EXECUTIVE SESSION:	Bynum, Chock, Hooser, Kagawa	
	Rapoza, Yukimura	TOTAL - 6,
AGAINST EXECUTIVE SESSION:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	None	TOTAL - 0,
RECUSED & NOT VOTING:	Furfaro	TOTAL - 1.

Ms. Fountain-Tanigawa: 6:0 and one (1) recused.

The motion to convene in Executive Session for ES-713 was then put, and carried by the following vote:

FOR EXECUTIVE SESSION:	Bynum, Chock, Hooser, Kagawa	
	Rapoza, Yukimura	TOTAL - 6,
AGAINST EXECUTIVE SESSION:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	None	TOTAL - 0,
RECUSED & NOT VOTING:	Furfaro	TOTAL - 1.

Ms. Fountain-Tanigawa: Six (6) and one (1) recused.

Mr. Chock: Good. So, we will take a quick break and come back in three (3) minutes. Is that okay, to start up in three (3) minutes? Then, I know we are right on lunch here, so we may be coming back to Executive Session or the other option is that we rotate Councilmembers for lunch, is what I was told. So, we will make that decision in there, but we may not be coming back directly on time, is my understanding. Do you have a question?

Mr. Kagawa: Well, I think by law we need to provide staff with time to go and eat. So, my recommendation is that we try to get done by

1:00 p.m. and if we cannot, maybe we perhaps should just take the break and go straight back into Executive Session if that is okay with you folks.

Mr. Chock: That is good. Let us see what we can get done.

There being no objections, the Council recessed at 12:34 p.m.

There being no objections, the meeting was called back to order at 3:02 p.m., and proceeded as follows:

(Chair Furfaro was noted as recused from C 2014-93.)

Mr. Chock: Can you read that item that we need to move on?

There being no objections, C 2014-93 was taken out of order.

COMMUNICATIONS:

Ms. Fountain-Tanigawa: This is on page 4.

C 2014-93 Communication (03/14/2014) from the County Attorney, requesting authorization to expend funds up to \$65,000 for Special Counsel's continued services to advise and represent the County Council in matters relating to the investigation of personnel matters involving the County Auditor's Office, and related matters (including Ernesto G. Pasion vs. County of Kaua'i, et al., Civil No. 13-00676 ACK RLP (U.S. District Court)): Ms. Yukimura moved to approve C 2014-93, seconded by Mr. Bynum.

Mr. Chock: Motion and a second. Anyone would like to speak on this item? Seeing none...no?

The motion to approve C 2014-93 was then put, and carried by a vote of 6:0:0:1 *(Council Chair Furfaro was recused)*.

Mr. Chock: Is there another item we need approve as well?

Ms. Fountain-Tanigawa: No, that is it. The Chair will be returning.

Mr. Chock: Okay. I know Chair Furfaro wants to be a part of this and hear the update and I think someone is calling him right now, but you folks can come up please and get ready for this update. Thank you folks for being here. Let us move to whatever we can. We will continue to move through, but you can sit there.

Ms. Fountain-Tanigawa: This is on page 4.

C 2014-88 Communication (03/04/2014) from the Executive on Transportation, requesting Council approval to amend the amount authorized to receive, indemnify, and expend the Federal Fiscal Year 2013 Federal Transit Administration (FTA) Section 5339 Annual Apportionment provided to the County of Kaua'i to support public transit capital expenses, by increasing the amount by

\$15,833, for a total grant award of \$415,833: Ms. Yukimura moved to approve C 2014-88, seconded by Mr. Kagawa.

Mr. Chock: I do not see Celia here for any questions.
Any discussion on this?

The motion to approve C 2014-88 was then put, and unanimously carried.

Mr. Chock: We can fit another one in.

C 2014-89 Communication (03/05/2014) from Council Chair Furfaro, requesting the presence of the County Engineer, to provide an update on the Ala Kalanikaumaka Street off-site drainage area and the efforts of the Department of Public Works to address the reported problems that occur following heavy rain.

Ms. Yukimura: Move to defer, right?

Mr. Chock: I believe there is a motion to defer.

Mr. Kagawa: No refer.

Ms. Yukimura: Refer to Committee.

Mr. Rapozo: Mr. Chair?

Mr. Chock: Please.

Mr. Rapozo: We have members of the public here that came to testify on that. So, I am not sure if you wanted to take that now.

Mr. Chock: Chair is on his way up now and since they are here, why do we not get that done too.

Mr. Kagawa: I think Coco Palms was scheduled before. I mean, I do not want to tell anybody to wait, but Coco Palms was at 1:30 p.m. and Ala Kalanikaumaka Street is 3:00 p.m.

Mr. Chock: Okay, we will take Coco Palms first then.
We will come back to it. Thank you.

C 2014-90 Communication (03/10/2014) from the Fire Chief, requesting Council approval to receive and expend the recurring Volunteer Fire Assistance Program Grant No. 13-DG-11052012-102 in the amount of \$50,000, for training and acquisition of equipment and materials: Mr. Kagawa moved to approve C 2014-90, seconded by Ms. Yukimura.

Mr. Chock: Would anyone like to speak on this item for the Fire Department?

There being no objections, the rules were suspended to take public testimony.

There being no one to provide testimony at this time, the meeting was called back to order, and proceeded as follows:

Mr. Chock: Any discussion Councilmembers?

The motion to approve C 2014-90 was then put, and unanimously carried.

Mr. Chock: Next one.

C 2014-91 Communication (03/11/2014) from the Director of Finance, transmitting for Council information, the Second Quarter Estimate of Revenues and Expenditures Report (Periods 4-6) for the Fiscal Year 2013-2014: Mr. Rapozo moved to receive C 2014-91 for the record, seconded by Ms. Yukimura.

Mr. Chock: Motion to receive for the record here on the table. Anyone would like to speak on this item?

There being no objections, the rules were suspended to take public testimony.

There being no one to provide testimony at this time, the meeting was called back to order, and proceeded as follows:

Mr. Chock: Any discussion Councilmembers?

The motion to receive C 2014-91 for the record was then put, and unanimously carried.
(Council Chair Furfaro was noted as present.)

Mr. Chock: That ends C 2014-91. Chair Furfaro is back in the room. Welcome back, and we have Coco Palms here for us

Mr. Chock returned Chairmanship to Council Chair Furfaro.

C 2014-87 Communication (02/03/2014) from Council Chair Furfaro, requesting the presence of Michael J. Belles, Esq., to provide the Council with the first quarterly progress report relating to the rebuilding of the Coco Palms Hotel by Coco Palms Hui, LLC: Mr. Kagawa moved to receive C 2014-87 for the record, seconded by Mr. Rapozo.

Chair Furfaro: Thank you. Gentlemen, thank you very much for being here. In this communication and put it on the posting, I had given basically four (4) questions that I wanted to make sure that we covered today after you gave us kind of an update on how you have progressed so far.

There being no objections, the rules were suspended.

Chair Furfaro: I will let you folks go ahead and share with us what you can at this time. So, you have the floor Mike.

MICHAEL BELLES: Good afternoon Mr. Chairman and members of the County Council. For the record, my name is Michael Belles representing Coco Palms Hui, LLC. Sitting to my immediate right is Dirk Soma. He is the Head, I will call him our leader of our Culture Advisory Committee for Coco Palms. Sitting to his right is Tyler Greene, one of the principals of Coco Palms Hui, LLC, and sitting immediately behind Tyler is Chad Waters, the other principal of Coco Palms Hui, LLC. I would like to begin by thank the Chair and the members of the Council for affording us the time. We told you back in December that we would be more

than happy...I do not mean that facetiously, to appear before you and report to the Council on a quarterly basis and give you a status report of what is happening with Coco Palms. In addition to whatever rumors or hearsay are out in the community, we can tell you at least what we know and understand and respond to any questions the Council may have. What I would like to begin by describing very briefly and then I will turn it over to my clients and to Dirk, is that we have had our pre-consultation meetings with the County Attorney's Office and the Planning Department to first identify what permits are likely to be applicable to this project. At this point, we have identified minimally, an SMA Permit, Class IV Zoning Permit, and a Project Development Use Permit would be required for this project. We are still in the process of finalizing site plan, architectural design drawings, as well as all of the other plans that are necessary before we can actually come up with a final plan which would then be accompanied by a narrative, and then constitute a permit application. Once we have that in draft form, we would like then to circle back to have another meeting, at least one (1) more meeting, with the County Attorney and with the Planning Department to make sure we are on agreement in terms of what the entitlement or permitting path should be for the project. The other permit that we are going to be applying for within the next couple weeks is the After-The-Fact Dust Fence permit. Before, we have failed to do so, not intentionally, just not knowing any better for the shoreline setback determination, which is basically required for anything within five hundred (500) feet of the shoreline as you all know. I literally mean anything. So, this is something that we will be filing in the next couple of weeks. Beyond that, that is really the status of the permitting and entitlements to-date and I would like to turn it now over to Mr. Greene to give you an explanation of where we are in terms of working together with the operations and covering other aspects that we had discussed previously. This has been prompted by the last letter from the Chair of the Council to my clients. So, with that, I will turn it over and at any point at the will of the Chair, you could interrupt us or you can save the questions for the very end.

Chair Furfaro: The four (4) points that I had, point number four was giving us kind of an update on the permit requirements which you have done. I guess what I am looking for is how we are doing on the community meetings, where do we stand on a brand selection for an operator, and do we have any rough outline of a critical path, were my comments from the last time about timeline from hopefully a very successful opening. I guess that is what I would like to go over.

Mr. Belles: What I can describe very generally, and I have to be general when we talk about timelines because just for the entitlement and permitting process, we all know that any estimate you can give presumes a lot of things. For example, (inaudible) intervention, support of the community, and that our application is appropriate to the review of the Planning Department staff. I would say that I would like to think that we would have the entitlements in place, assuming we are looking at an SMA Class IV Zoning Permit and Project Development Use Permit, within six (6) to nine (9) months. The dust fence and shoreline setback determination should be a matter of one (1) to two (2) months. Following that, it is a matter of finalizing, construction drawings, and getting building permits approved, but we do not know what conditions will be imposed by the Planning Commission, and as you all know, that can determine possible changes or revisions to our site plan as well as the ultimate construction drawings that would be necessitated by those conditions. So, we have to go through that process first. This is going to be rather arbitrary, but I would like to think that by the end of year or by first quarter of 2015, we might be able to turn over that

proverbial first spade of dirt and get the project under construction, but please do not hold me to that because so much can happen in just the next six (6) months which could alter that. It could accelerate, but at the same token it could take longer than that. That is my best guess at this point and time knowing what I know today. I will let Tyler deal with the issue of the operator and where we are in terms of choosing a brand name and then actually, Dirk Soma is going to be critical to the discussion of all the meetings that have been had thus far with the stakeholders, the community meetings. He has done, in my opinion, an incredible job working with the community and I have not worked with him before. This is my first opportunity. I have been very impressed at how well he has worked together with the community and the stakeholders, how well he has functioned as a moderator for many of the meetings together with the clients and he will cover a lot of that. I do believe that you have all received an E-mail from the client which had attached to it, basically a summary of the community activities and functions which are a lot of the items that Mr. Soma will go into more detail on, give more responses to any questions you may have, but that is the one (1) item we wanted to get to you before today's meeting. I apologize it was yesterday on the holiday that it was sent to you, but we did want to give you a little time and not just hit you with it at the meeting today. So, hopefully you have had a chance to at least look at some of it. If not, Dirk will give you a summary of it and again, be available to respond to any questions you may have. So, if it satisfies the Council, what I would like to do is first turn it over to Tyler Greene and let him go into the issues of operations and branding, and then we can turn it over to Mr. Soma to deal with the community relations.

Chair Furfaro: Well, thank you, Mike. There is a lot of detail here. So, perhaps rather than dig into it, we will have some time to digest it and really have a better understanding of an update at the next time around.

Mr. Belles: And what it may do, we will be back in three (3) months at the pleasure of the Council, but as you indicated, we are always accessible and we are available to meet with the Council or respond to anything in writing that you may send to us. So, we will always be available and respond to the Council to the best of our ability. With that, I will turn it over to Mr. Greene and let him explain where we are in terms of operations and choosing a brand for the project.

TYLER GREENE: Thank you. Good to see everyone here today. Thank you for having us. In terms of the operation, we are what we would like to call "first and goal." We, as you folks know, we have selected two (2) operators early on to try and work with. Out of one (1) of those operators, we are working through a management agreement right now. We feel we are probably about week away from locking down that management agreement. There were a couple things that were important for us within the scope of this operator and at the top of the list was being able to infuse to the cultural program that has been put together by the Coco Palms Cultural Advisory Committee, into the day-to-day operations of the resort. So, things like the torch lighting ceremony and other cultural and historical aspects that are so important to the resort itself. We want to make sure that any operator that comes in does not just take those on and practices those things for the first year or two (2) years or three (3) years. We want to make sure that it is carried on in perpetuity and so that is kind of the finishing touches that we need to work through on our management agreement to make sure that everything is in line there. Then the second thing was we wanted to have some flexibility and freedom on terms of choosing the General Manager of the property. We feel that in order to

infuse the type of feeling and program that Coco Palms is calling for, it is going to start with the General Manager and it is going to infuse down into all of the employees of the property. So, that is kind of the other thing that we are working through right now in the operations side. So far the group that we are steering towards is showing great flexibility and has shown just as much excitement as we all have for those cultural and historical aspects of Coco Palms. So, we will probably be able to go public with that information within the next couple of weeks is what we are thinking. Any questions on the operations side?

Chair Furfaro: Let me just say if I may, some of the...well, I believe the last time you shared with us it was narrowed down to two (2) brands.

Mr. Greene: Correct.

Chair Furfaro: But your concern was making sure that the highlight could in fact be with the Coco Palms signature name being the headliner?

Mr. Greene: Correct.

Chair Furfaro: And the operator being secondary?

Mr. Greene: Correct.

Chair Furfaro: I just wanted to share with...well, for example with the Moana Surfrider. It is not first acknowledged as a Weston Hotel.

Mr. Greene: Right.

Chair Furfaro: It is actually taken its first lady of Hawai'i's name, the Moana Surfrider, operated by Weston Hotels.

Mr. Greene: Right.

Chair Furfaro: So, I assume that is one of the test of the operators willing to put that hotel's name premiere and the operator secondary?

Mr. Greene: Absolutely. That was the first thing on the list and so it will be what we would call soft brand where it will be Coco Palms by x. So, the idea is that the operator is an afterthought and for any visitor coming to the resort, they are focused on Coco Palms and not whoever the operator may be.

Chair Furfaro: Members, any questions along the line of operator?

Mr. Greene: I would like to echo Mike's comments about timing. We have kind of internally made it a goal hopefully to be open by January 2017. If we can do it sooner, we would love to do it sooner, but so far everything seems to kind of be lining up in that direction. So, that is...

Chair Furfaro: Did I hear 2017?

Mr. Greene: Correct. If we get permits within six (6) to nine (9) months, it is looking like a two (2) year construction schedule. Maybe we

can push that a little bit, but most likely it would be a twenty-four (24) month construction schedule and then that would then take us to first quarter 2017.

Chair Furfaro:

Mr. Kagawa, you had a question?

Mr. Kagawa:

He answered it.

Chair Furfaro:
members at this time? Yes?

Oh, he did? Okay, very good. Other

Ms. Yukimura:
to-date?

Are you through with your progress report

Mr. Belles:
what Mr. Greene said and then I can turn it over to Dirk to cover the Cultural Advisory Committee.

I would like to add one (1) more thing to

Ms. Yukimura:
complete presentation. Thank you.

Okay. I will have questions after your

Mr. Belles:
Tyler Greene just mentioned, we have gotten an incredible level of cooperation from the County, not only from the County Council and the Chair, but also from the Administration, from the Mayor, the Office of the County Attorney, Ian Jung in particular, and the Planning Department with the Planning Director, Mike Dahilig being great assistance to us. There are no guarantees in this, but I really appreciate the openness, the intellect that they have applied to work together with us to come up with an appropriate entitlement course of action and also, helping us come up with the best possible design in operations for the property. They have done it in a very timely fashion and knowing things and challenges that they have to deal with, it is truly remarkable, the amount of time that they have afforded us to help us move this project along. So, I wanted to acknowledge that because it has been very important to us getting to the point that we have now and I hope you will all agree that not just with the community relations, but in all things when you consider we were just here in December with the holidays. Quite a bit has been accomplished in the last two (2) to two and a half (2½) months. We want to continue that momentum and continue moving rapidly, but also do things thoughtfully and properly. All of things have to be done, but some of them are time consuming. With that brief recap, I will turn it over to Dirk Soma and he will cover the community relations side together with all of the good work that the Cultural Advisory Committee has done for Coco Palms.

Chair Furfaro:
we have no more questions for Mr. Greene about the brand, the management contract, and so forth. Then, the last question I had was the community meetings, an update regarding the discussions, and we will turn that over to Dirk.

Well, thank you. I just want to make sure

DIRK SOMA:
record, Dirk Soma, member of the Cultural Advisory Committee. I guess due to attrition, I am the least busy of everyone that is on the Committee so I have been asked to kind of appear here before you today. You do have a copy of a report that we generated for Tyler and Chad. It just goes through the amount of activity that the Coco Palms Cultural Advisory Committee (CPCAC) has done since coming together in October. Real quickly, I will go through the report. Our initial activity

Aloha, good afternoon Council. For the

started off again, with developing our objectives as a Cultural Advisory Committee and we came up with three (3). The three (3) of them are to assemble the best ideas from respective members of the Hawaiian host community and seek guidance that ensure that the integrity of the property is perpetuated while supporting a resort that is sustainable. So, the underlying objective of us is to support a resort development. The second objective is to create and present to Coco Palms Hui, LLC a guiding document that focuses on the *hoi'i* or the reverence of the property by honoring and incorporating the rich history and culture of the *'āina* into the resort's design and programs. Our third objective is to provide opportunities for all Kaua'i's voices to share their *mana'o* as the Coco Palms moves from conceptualization or an idea and becomes a destination that emulates the values of *aloha* and *ho'okipa*. So, these are the first things that we did, is developing our objectives. Then extension of the Iniki Ordinance and we are very happy that we were able to get the extension.

Once we got the extension, we moved ahead with our other objectives. You will see a section of our guiding principles document that is there for you and there are five (5) guiding principles that we have submitted to Coco Palms Hui, LLC. These are very important because as we move forward, we want to make sure that the integrity of the development and the resort once it operates, honors the things that we are tasked to do through our objectives. The first guiding principle is we will honor the sacredness of the *'āina* on which the property stands and the surrounding area. Second, is that we will preserve the history of the host culture as well as the culture that of made Coco Palms the iconic destination of Kaua'i. Third, we will perpetuate the host culture through integrating Hawaiian cultural values and activities into all phases of operations so that associates understand the sense of place of their worksite and their *kuleana* as hosts. So, here we see the Coco Palms Cultural Advisory Committee not just a part of the development, but the operations as well. The fourth guiding principle is that we will offer authentic activities and programs so that guests will come away with truly unique Kaua'i experiences. The last guiding principle is we will provide a gathering place for Kaua'i's community to honor the *'āina* and perpetuate Kaua'i's sense of community. So, those five (5) guiding principles have been shared with the developers, they have embraced them, and we have also shared these at all of our community meetings.

Then you will see Attachment B actually has the guiding principles document in its complete form. Then, we engaged in various community activities. So, if you look at our timeline beginning on February 5th, we hosted a luncheon at the Aston Aloha Beach Hotel for our Native Hawaiian community stakeholders. We did have about thirty-three (33) people in attendance and we had an opportunity to go through a discussion where we shared the CPCAC's objectives, our guiding principles, and then we gave every participant the opportunity to vision what it is they would like to see as the Coco Palms development. What would you like to see in that operations? So, in Attachment C, you will see all of the comments that we gathered. We handed out 3x5 cards, we asked them to list three (3) to five (5) ideas, and we asked every individual to share their highest priority. So, what you have in front of you in Attachment C, are the verbatim comments from that luncheon. On the 25th, we hosted a meeting with Hawai'i Island Land Trust and Friends of Coco Palms as well as community members at the Kapa'a Neighborhood Center. You will see in Attachment D, all of the comments that they shared there. On March 14th, we were really happy to host the current cohort of Leadership Kaua'i. So, those students were able to take a site tour of the property and then also be exposed to the objectives as well as the guiding principles and Tyler did a great job of kind of just walking them through the property and sharing the vision for Coco Palms.

(Mr. Kagawa was noted as not present.)

Mr. Soma: You will see on March 20th, this was a really fun activity we did with Kamehameha Schools Ipu Kukui Intersession Program. Not only did we have them walk on property and share their *mana'o*, but we also took them on a tour up Wailua River with Kawika Smith. He got to share with them the history of the area, their history as running a business in the area for four (4) generations, and Kawika's *kuleana* as that next generation of owner with his family owned business. Then again, the walkthrough that we did with them on property. You will see Attachment E has all of their comments. It is really great to see this perspective from our youth because they are the next generation of stakeholders as we move forward. Then most recently on March 21st, we had a general community meeting at Kapa'a Neighborhood Center and you will see in Attachment F, all of the verbatim comments there.

From all of these, we saw a lot of thoughtful responses and they were not just about individual preferences, but they were about community preferences as well. You will see that there are recurring themes as you look at these lists. Some thought about bringing back a lot of the things that Grace was doing, torch lighting ceremony and coconut tree planting ceremonies. There were also suggestions for authentic Hawaiian cultural activities whether it be *la'au lapa'au*, *hula*, 'Olelo No'eau, 'Olelo Hawai'i, *lomilomi*, whatever it may be, making those authentic. Then there was a series of comments that embraced the community and ensured that community would have access to the property. I think (inaudible) had over two hundred twenty-five (225) comments in total that we have put together. We did get additional E-mails from attendees and we did respond to those E-mails thanking them for coming, and we shared with each group that was at each meeting, their respective list from their meetings. So, if they gave us their E-mail contacts, we sent them a copy of all of the comments that came out of their meeting. Our next steps that you see to continue the communication. In one (1) instance when we met with the Native Hawaiian community they asked if they could share this with their network and if their network had feedback, could we bring it back to the group?

(Mr. Kagawa was noted as present.)

Mr. Soma: I said, "By all means." The whole Ho'okipa network has come up with some ideas and they want to share them with us as well. So, we want to keep communication open. We do have two (2) meetings scheduled besides the one that is in the report, the April 26th tour with Hawaiian Island Land Trust. Coco Palms Hui, LLC will be the presented speaker at the Kaua'i Native Hawaiian Chamber of Commerce breakfast meeting on April 15th. That is not put in this report. So, there are two (2) additional formal meetings that are already on the calendar for April. We just are really, really fortunate and pleased to be a part of this process at the ground floor. The Advisory Committee knows it does not have all of the answers and we continue to reach out to the community. Based on the receptiveness that we have gotten from the developers, we are very happy to be working in tandem on this project. So, that is our report. You can read through each of those comments and you will see maybe some of your own thoughts and feelings about it listed in that. So, we do feel that we are on the right track with this. I will take any questions that you may have.

Chair Furfaro: So, very thorough, very much appreciated. Dirk, can you give us a copy of the bylaws of the activities associated with the Native Hawaiian Chamber of Commerce?

Mr. Soma: I would be happy to.

Chair Furfaro: Okay. Could you identify for us, the membership qualifications?

Mr. Soma: Sure. Would you like that in writing or I would be happy to explain that right now?

Chair Furfaro: Before the next visit just so that when you refer to these organizations, we understand their structure and so forth.

Mr. Soma: Sure.

Chair Furfaro: I appreciate the summary on the guiding principles. Obviously, I guess looking at this and being someone who has worked Coco Palms at the same time, understanding some of these similarities with resorts that have tried to perpetuate a sense of place and so forth. I was wondering if you folks are, as you referenced it, "honor the sacredness of the area." If you are trying to maybe reference those terms in Hawaiian? For example, the sacredness of Coco Palms itself is being a place that is *wahipuna*?

Mr. Soma: Yes.

Chair Furfaro: And so forth. You might want to look at some, but the one I seem to be missing here myself, the value of *ho'okipa*, the sense of being a good host once the people are actually here. So, I am sure that will play into your brand name and your service.

Mr. Soma: Yes.

Chair Furfaro: But those are just outside comments.
Mr. Kagawa, you have the floor.

Mr. Kagawa: Thank you, Chair. I want to thank all of you for the report. Very thorough for a quarterly report and I want to thank you all for showing up. Three (3) months ago, I think we were, I do not want to say fifty/fifty (50/50), but we did not have a press release by the Mayor saying Coco Palms is back. He just showed a lot of hope, but since then I think maybe that was two (2) months ago, you see pretty much he made a statement that he believes we are on our way and he made a statement that I think hit the major newspapers as well as KHON News. So, I mean, is that feeling shared with the group? I mean, obviously, the Mayor came out.

Mr. Greene: Just a general comment on that. We have been pleasantly surprised and grateful at the same time in terms of how everything seems to be coming together. Every day, it is just more and more tangible and every day we wake up and we feel we are getting closer to the goal collectively with everyone. For Chad and I, what has been so amazing is the love and support we felt from Kaua'i in general and how it is not about us, it is about Kaua'i. It is bigger than us and so for us, this project is going to happen. We feel very confident that this is going to happen.

Mr. Kagawa: So, in your opinion, you folks are on hundred percent (100%) sure we are going to get this done?

Mr. Greene: Well, we are more than committed and so for us, yes, it is one hundred percent (100%) for sure.

Mr. Kagawa: I appreciate that. I think when you take on a big venture like this, you have that "nothing is going to stop you" attitude. So, thank you and you have a that "nothing is going to stop you" attitude because I have known Dirk for a long time and I know that he does not know how to go less than one hundred percent (100%) in anything he does. So, I expressed that to other Councilmembers as well prior to you briefing us here, but he has a good heart so he is going to take care of what the local area concerns are. My only...because I am one hundred percent (100%) sure it is going to happen. My biggest worry and this is not really a question, is on the traffic, the impact there. There are two (2) areas that I am particularly concerned about, is the main highway because Kapa'a is already stuffed as it is. So, I guess at a later point as we get closer to the project getting done, what kind of work have we done with the State to get traffic to merge in smoothly whether it be creating a merge lane of some type from the hotel to the main highway. I would really appreciate that. Also, any impacts to the Wailua Homesteads and Houselots areas. I am sure there are ways of again, of flowing smoother into traffic without plugging traffic and I really would appreciate it. I realize when you add a lot of cars, you cannot expect things to get better, but as long as we really work well with the County and the State Engineers, I would really appreciate it because we definitely do not want to add to what is already a bad problem at times in Kapa'a. Thank you again.

Mr. Greene: Thank you.

Mr. Chock: Chair, thank you. Congratulations. Good job. Thank you, Dirk for all of the hard work you have done as well with the community. I can tell by the different groups that you had participate, that is a diversity of perspective and do you feel comfortable about that as well in terms of all the people and voices that you have been able to interact with in terms of getting feedback?

Mr. Soma: I think it is a representation. We still need to have more voices.

Mr. Chock: Okay.

Mr. Soma: Our vision was to work with small circles and work out. So, we started with our Native Hawaiian community first, then to the Friends of Coco Palms and Hawaiian Island Land Trust, and then to the larger community. So, since we have done these three (3) opportunities to reach out, now there is opportunity to reach out even further and then deeper within each of these circles as well. Like I mentioned, the ho'okipa network, Nani Rogers, and that is her group. So, once she shared all of the *mana'o* from that meeting and said, "We have some more ideas, can we come back and meet again?" Most definitely. Again, not only are we working wider in the circles, but deeper within each of the circles.

Mr. Chock: Good. *Mahalo*. I was looking on I think Attachment F or the one that walks about what you are going to do with the *iwi kupuna* (inaudible)? Man, that is a big one. Do you folks still see concerns with that issue at Coco Palms and some of your (inaudible)?

Mr. Soma: Yes, I think it is a definite concern and I think we have learned a lot of lessons from what people have done incorrectly and correctly. So, we can learn from those correct lessons and move forward. It is again, engaging the right people and doing it the right way.

Mr. Chock: Thank you. Now, just one (1) last thing. I know there was talk about working with the Public Land Trust and is that discussion still continuing and moving forward?

Mr. Greene: Yes, there are continuous conversations and just in general terms, what we are discussing is actually granting a conservation easement on the back *mauka* side of the property.

Mr. Chock: Okay.

Mr. Greene: So, that was something that they had asked for and something we felt that we were willing to do.

Mr. Chock: Okay. Thank you.

Mr. Greene: So, we have not worked out the logistics of that and how that would look, but those conversations are in progress.

Mr. Chock: Thank you.

Chair Furfaro: JoAnn, you have the floor, Councilmember Yukimura.

Ms. Yukimura: Thank you. I do want to congratulate you and thank you for this work done thus far. It is good that hear that things have been going well. So, I am glad to hear that. My questions are regarding the input that you have gotten from the community and I am grateful that you have done this work. I guess the question is for Tyler. With all of this input, what are you going to do with it?

Mr. Greene: Well, I think that is why we are so grateful we have Dirk to help us lead, organize, and take all of these things into consideration. It really has been eye opening for us that there is a lot of commonality here and I think that the community at large, it feels to us, wants the same thing that we have always wanted, and that is to bring Coco Palms back to its original glory. One thing that we really liked was how Dirk passed out the 3x5 cards so that we could collect all of that. To answer your question specifically, as we continue to grow the Coco Palms Cultural Advisory Committee, those are things that will then get infused into the program. So, from a timing standpoint, our objective was to work through the submittal of the permits, once we know we have got the permits, then Dirk, Chad, and I can all sit back and say, "Okay, how are we then going to make all of these things a reality and to what extent?" So, that is what we are in the process of doing.

Ms. Yukimura: Okay. So, Councilmember Kagawa brought up the issue of traffic which was on my list. I guess, as you are developing your application for permits, you must be grappling with that issue?

Mr. Greene: Yes, and there are a couple different concepts that we are kind of working with. I do not want to speak out of turn here, but we are looking at the possibility of maybe bringing the main entrance of the hotel on the Haleioli side of the property. So that way, when people come in from Līhu'e across the bridge, they do not have to turn at the light there where the Homesteads is. So, the thought is if we could keep that traffic moving because it is usually that left turn lane that gets so backed up. If we could keep that traffic moving to what would be the Wailua side of the property, they come in there and then maybe even we look about having a turnabout so that instead of coming out on that side of the property, they come back to Haleioli and then exist the property that way. That is number one, and then number two on our marketing side, we really want to push the idea that you can come to Kaua'i and you do not have to be so reliant on a car. So, we are really pushing the bike path and toying with the idea of having maybe a fleet of ten (10) electric cars on the property that a hotel guess could rent for an hour or half a day or so on and so forth. So, now they do not have to come and rent a car for a week and then it just kind of bogs everything down. Then with that, we would set up tours in the morning. Maybe one morning they can go to the North Shore, next morning they can go to the South Shore. So, in the course of two (2) or three (3) days, they can feel like they have seen everything they needed to fit into Kaua'i and then the rest of the time, they can enjoy all of the amenities right there in Wailua and Kapa'a. There is really so many fascinating things in our opinion, about that area, whether it is because of the historical side of because of Wailua River and how that ties in or because of Queen Deborah Kapule. So, there is just a lot of things for people to really soak in there and so there is no need in our opinion, for them to be driving all over the island the whole time that they are here. So, that is kind of...part of our program is to really push that and with this traveler coming in, actually show them that it is more conformable to not have to worry about a car, that we will pick you up at the airport, we will have everything laid out for you, and you do not have to worry about anything else.

Ms. Yukimura: I like that. What about the crossing of the main highway?

Mr. Greene: It is a delicate issue for sure. The way we have it set up in terms of getting people to the beach is we are talking about a shuttle that would, whether it is in kind of a golf cart fashion or whatever it may be, that would just run loops that would pick up the guests and then come in. We are in discussions as well as having public parking for beach access on the property. So, the shuttle is not just for hotel guests, it is for anybody that wants to go the beach that day and they can come in and just be on continuous loops and then drop people off across the street by the Seashell Restaurant there.

Ms. Yukimura: So, you have abandoned the ideas of either an underpass or an overpass?

Mr. Greene: Yes, it just seems to be too problematic.

Ms. Yukimura: Okay. Well, I mean, your shuttle is still going to add to the traffic.

Mr. Green: Yes, and so that is something that we need to work through.

Ms. Yukimura: Okay. What about housing?

Mr. Greene:

Do you want to comment on that issue?

Mr. Belles: We have not had an opportunity to sit down with Housing yet. The main reason for that is we have not even decided on what the density of the project is. As you know based on prior discussions that we have had with individual members of the Council, plus what we said during the course of the public hearings and public meetings that we had on the Iniki Ordinance, the client is looking at acquiring parcels and looking to ultimately, once we decide on what the housing obligation would be, sitting down with the County Housing Agency, but until we have done more internal work and come up with a plan that they feel is viable and sustainable, it would be premature to sit down with Housing, but it is something that we want to do. Ideally, in our next quarterly report, we will have a component that deals with the housing issue.

Ms. Yukimura: Well, I think that is acceptable. I mean, I understand that you are focusing on permits and on getting the inputs that can infuse your permitting...the putting together of your permit applications. I am thinking that the Housing Agency on its side, should be looking at creative opportunities too and they have been very busy. So, I do not know that they have spent much time there, but I am glad that it is still on your list and I am hopeful for something that will be very beneficial to the community and to you as well.

Mr. Belles: Well, and having worked with the Country Housing Agency in many different capacities in my career, I can say this without being facetious, I look forward to sitting down with them and inviting their ideas. I believe that by working together, we can come up with an appropriate plan.

Ms. Yukimura: Yes. My last question is about the density issue. You said you have not settled yet on that?

Mr. Belles: Correct.

Ms. Yukimura: But that will be settled by the time you apply for permits I presume?

Mr. Belles: Absolutely, it has to because the density, total number of unit count, is going to drive parking and so many other issues. Bad pun using the word "driving," but a lot of issues are going to be reliant on the number of units, where the units are located, and the ultimate design of the plan. So, all of these things are really working together in tandem.

Ms. Yukimura: And what was your permit schedule? When are you targeting submitting the application?

Mr. Belles: We would like to file in the next sixty (60) days for the SMA Class IV Project Development Use Permit, we would like to file the Shoreline Setback Determination (SSD) for the after-the-fact dust fence in the next couple of weeks, and if all goes well, we would like to have permits with reasonable conditions between September and December, before the end of the year.

Ms. Yukimura: Okay. Alright. Thank you.

Chair Furfaro: Now, we will go to Mr. Bynum.

Mr. Bynum: Thank you for the update and you really got my attention with the traffic discussion. So, I want to start just by saying I had some involvement in the visitor industry in the past and we are losing a market share on Kaua'i because there are people who cannot or choose not to drive cars. So, I just want to applaud your initiative very hugely. I hope that Coconut Resort Association is looking at a shuttle again someday to serve the Coconut Coast. We had a history of doing that with the startup during a difficult economic time and there was not frankly, enough logical stops and not all of the hotels bought in, that kind of thing, but I hope that is a part of the future endeavor.

The overpass last time, you folks were like yes, overpass. It will take surfboards too. That was my question and I have always thought that the Seashell Restaurant and now the four (4) lane project, there has been some land acquisition. The State is going to come in there and do some things that is going to affect Haleioli and the left turn lane there. Very complex issues as you have noted. We have great flexibility at the State level from our local official in my experience, but once you get to the State level, it is like a black hole. So, I hope you are...does this...there is a question here. Do these issues have to be resolved for the SMA? I mean, what are the timelines here? I love your idea about an alternative kind of shuttle thing. Some of this and where I get confused is in the past, we had these other proposals where there was commitments made for parking for these kinds of issues. You are in the middle of that. Some of these questions you can answer and other you do not, right? So, do you need that for the SMA was the first question?

Mr. Belles: Well, for the SMA permit in my experience historically, they do look at issues like traffic, they do look at issues to mitigate traffic impacts like a shuttle, like bus service, and using alternative means of transportation and the multimodal path is a great example of that. Being it abutting the property, it is something that would greatly benefit the clientele as well as surrounding community. It would lessen impacts all the way around. So, it is self-serving for us to pursue these opportunities. I use the word "opportunity" deliberately and not obstacles because I think it is a win-win if we can pursue these successfully and have these other options available to us rather than just have everyone having a dedicated car.

Mr. Bynum: So, these issues about the traffic flow, the impacts, is something you have to be working on right now.

Mr. Belles: They are part of the design, for the site plan, and it will part of the application because we do have to discuss traffic impacts. Based on my experience, I can almost assure you that it will be a discussion before the Planning Commission as well as the Planning Department before we file our application about how we plan on dealing with the traffic impacts.

Mr. Bynum: Because you have land ownership there, some of these may be mitigated. So, my next question is about the Wailua Houselots community and whether you are doing outreach there. I was a resident there thirteen (13) years and whatever happens there at that signal, and probably half of the residents do not know that the current plan is they are going to lose their left turn lane into, and I still do not understand how that is going to get mitigated. Now you add some of the things you are talking about. Do you have a traffic engineer working on this?

Mr. Belles: We will have traffic engineer. We will have to do the appropriate studies and analysis to have the answers for the Planning Commission. I can tell you I personally have a stake on this. I live up Kuamo'o Road, my partner lives in Houselots. So, we want to make sure that our quality of life is not adversely affected by this development as well.

Mr. Bynum: So, Ray McCormick is in dialogue with you folks?

Mr. Belles: We have had one (1) meeting with him and we are going to be having several others. As you know, as part of any permitting process, you do have responses from State Highways Division because we will be utilizing and impacting the State highway system.

Mr. Bynum: I could go on with this, but I know you are doing your due diligence. Last one, Seashell Restaurant, is that out of this mix?

Mr. Belles: No, the Seashell Restaurant is also being proposed to be renovated and rebuilt just like the hotel. The only issue that has been taken off of the table now as Tyler Greene explained, was the overpass because that regrettably, has a lot of entitlement problems with it including the possibility of an Environmental Impact Study (EIS) because you are using a State right-of-way. That is an absolute trigger in the State law, Chapter 3430(A), Hawai'i Revised Statutes. So, that is really inhibiting our ability to pursue that because if we were to consider that, I can guarantee you that would delay our project beyond the two (2) years you have given us under the Iniki Ordinance to see this project through.

Mr. Bynum: I am not surprised that was the conclusion about the overpass.

Mr. Belles: I just want to be honest with you about why that has diminished in terms of being a reality because before we looked into this, that was something that we wanted to pursue and why we discussed at the last meeting as you pointed out, the idea of having somebody step into the elevator and have a surfboard with them, was our goal.

Mr. Bynum: This is the only issue I am going to stick with and then let go. This is really, really important now because that bridge was the solution to all of these, how are you going to get visitors there, the guests back and forth, right? So, this is something I want to really pay close attention to personally because I feel like a commitment to those Wailua folks who are going to be impacted by this and in the recreational use, things have changed. There is a path there now that is a good thing, but it also adds some complicating factors. So, good luck figuring that one out because that one is critical, but I also heard a commitment that whatever system there, would be available for the people who live in the Houselots. I used to go down there and take the kids across the road and leave them fishing for a couple of hours then come back because as a parent, I would not let them cross that road. So, I hope you are committed to the people there to help with the solution that works for the local residents as well. Thank you very much.

Mr. Bells: Well, as Mr. Greene explained, the shuttle is not only going to be available to people occupying units at the hotel, but will also be made available to members of the general public. Is that correct?

Mr. Greene: Yes.

Mr. Bynum: And then there is like parking on that side too for general public perhaps too?

Mr. Belles: We will be working together with the Planning Department and ultimately the Commission to have parking at both ends of the site so that those opportunities are available to the public also. So, it is not inconvenient where they have to walk the full length of the property to get from one side to the other or be as most people are by human nature, lazy, and cross the street wherever you can including outside of crosswalks.

Mr. Bynum: Right. Yes. Thank you very much.

Chair Furfaro: Again members, I just want to remind us all, this is our first briefing on this. I am going to give Mr. Hooser the floor next, but I want to let you know I have opened five (5) of the hotels on this island and the key part of this is true. Before you mandate what the visitor is doing, you need to make sure you know that brand you are dealing with because it is their customer that finds themselves expecting certain levels of service delivery and I just want to point that out there. You may say ten (10) electric cars, but the reality, if you have a GIT group operator, ten (10) electric cars is not going to make the day for them. You have East bound visitors and West bound visitors that they are married to certain brands, which have certain customer expectation. So, it is clear to me that you probably will know by the next time we meet who you might have as an operator. That is correct?

Mr. Greene: Absolutely.

Chair Furfaro: Thank you. Mr. Hooser, you have the floor.

Mr. Hooser: Thank you, gentlemen for being here and thank you for your presentation. The issue or the question I have is regarding the walkway over the highway. Clearly, there will be, hopefully, hundreds of people every day that visit and many of them if not most, will want to go across the street. So, I would encourage you to revisit the issue. I know Chapter 343 intimately and it should not be a roadblock *per se*. There are three (3) ways to get through that. One is to get an exemption. If the Agency looks at it and says there is not going to be an impact. The other would be an Environmental Assessment (EA), which is not an earth moving act of Congress kind of document and I would hope that you could get by with this Environmental Assessment. If in fact it was required in a full Environmental Impact Statement, then I would say, "Yes, this is going to cost some money and going to take some time." Given the long standing situation that there is just going to be more traffic, there is just going to be more traffic and there is going to be more people. So, I would encourage you to look at that option perhaps again or look for other ways to move people easily. I know we talked about shuttles earlier or other kinds of transportation, but I think the human inclination is going to be to want to run across the street. So, just...I mean, it is supposed to be a question.

Mr. Belles: Well, I will give you an answer even if there was not a question.

Mr. Hooser: Okay.

Mr. Belles: We do not want to foreclose that opportunity, but in addition to the trigger being the use of State lands, there is also the issue of how you would construct and design an overpass with the high water table, the dredging that would be required, and a lot of those other engineering factors would probably also be a non-waivable trigger to the EIS. Again, I just want to be candid with you and tell you what we have learned so far. We would like nothing better than to pursue that, but because of the specter of the EIS, I believe it would be very difficult for us to pursue that and meet the timelines that we have committed to.

Mr. Hooser: So, is it possible...if I can ask one (1) more question or ask a question, that you are looking at it in terms of long term planning where it does not impact the opening of the structure, but yet remains a part of the plan that you intend to implement after it opens?

Mr. Belles: The problem with that is that we have a Hawai'i Supreme Court decision that says if you have something that has to be done in phases or there is coupling in terms of the planning process, then you have to study it at the get-go, which if we were to be honest and approach this in the appropriate and lawful fashion, you would have to do the EIS if this was part of the ultimate plan.

Mr. Hooser: So, the EIS is required?

Mr. Belles: Correct.

Mr. Hooser: Okay. Thank you. Thank you, Chair.

Chair Furfaro: Thank you. We will go around one (1) more time. Mr. Kagawa, you have the floor.

Mr. Kagawa: Thank you, Chair. For me, the overpass was not there before and it is not a deal breaker for me. I just read the Star Advertiser, just briefed through it. It said Kaua'i is the fastest growing County in the State per the census. We are growing at one point six percent (1.6%). Maui is second at one point four percent (1.4%). That is one of the main reasons I was promoting in supporting this project, was the jobs that it could provide, not only primary jobs. As you know, Kaua'i, there is a costly price to live in this beautiful place we live and some people need two (2) or three (3) jobs in order to pay the mortgage and whatnot. So, I just think the opportunity of having that chance to not only serve our residents, but also our newcomers who are new residents, that opportunity to work and to have that place that we all love and remember. I think as all of the Councilmembers have mentioned, that overpass would be nice, but I do not think it is only on your shoulders. I think people do cross that road now. It does cause traffic problems not without the hotel. People enjoy the kayak rides and then they want to go to the beach area. Some do now know of that back road walkway through the sand or they are Americans with Disability Act (ADA) or they have a bike, they have to wait there. So, I think it is part of the State and the County's responsibility to our residents. We have a beautiful bike path there. I think possibly a partnership with the State and County to work or try partnership, whatever it may be, but I think it is a long-term plan that we could look at, but I do not think it is a deal breaker right now. I think the deal breaker right now is for you folks to do what you have been doing and I applaud your work up to this point.

Mr. Belles: Thank you.

Mr. Kagawa:

Thank you.

Ms. Yukimura: I want to talk about that overpass too and actually, Councilmember Hooser pretty much covered where I wanted to go on it. I mean, I am somewhat horrified that the EIS process, which was meant to protect the environment is making it more difficult to look at what I think would be an environmentally better solution than shuttles or more cars or people trying to cross at grade, that four (4) lane highway. All of that is a major problem and even if you do not address it before you open, it is going to come back to haunt you, I believe, in just the operations of your hotel. If State land is a problem, and I understand why it is a problem, we should somehow change that along the lines of what Councilmember Kagawa is saying. They need to be willing partners in solving this problem because it is their problem, State Department of Transportation (DOT), and it is our problem, the County, that wants a workable solution on our highways and we also want our visitors not to be so upset about our traffic congestion. So, I just want to say to Councilmember Bynum's suggestion of a shuttle in Kapa'a town. Actually, if the Kaua'i Bus system can come every half an hour and then every fifteen (15) minutes, which is what our long-term goal is, you do not really need a shuttle, but you have to cross the street and then go to the bus stop which is very close across from Kintaro or Courtyard at Waipouli. That is not a far walk if you can make if a safe walk and if they go every half hour or every fifteen (15) minutes, our ultimate goal, getting into Kapa'a is not a problem. So, there is that. What if you did work with the State Highways system, and thank God we have Ray McCormick. I know that it gets harder as you go up, and have the State propose a project.

Mr. Belles: If there was lawful way for the overpass to be built without interfering with the timeline that is imposed on us to develop the Coco Palms project, then that is something that we could work together with the County and the State on, but as long as there is a legal obstacle to us pursuing that path, then it is not something that I would recommend or could recommend to my client, that we do it and it might necessitate, as you suggest, either a change in the law or a better legal mind than mine to look at this and find a way of approaching this.

Ms. Yukimura: Or the State taking it on as a project because my mind was going to roundabouts and I know Michael Moule, I hope you are listening. I do not see how it can really work there, but because if you are talking about an entrance over there, those are a lot of left turns, whether it is by your shuttle to the airport or your individual cars coming in. So, we need a solution there, but if you say you are willing to contribute to the construction of the overpass, that might help a lot of the cost.

Mr. Greene: Can I just make a quick comment? It is our preference to do that bridge, but the balancing act is as Mr. Belles said, just the timing because we are worried about the timeline on the Iniki Ordinance, but also the timing of the opening of the hotel to hit the market at the right time, but our first choice would be to do the bridge.

Chair Furfaro:

This is just a briefing time. Mr. Hooser, you have the floor.

Mr. Hooser: Yes, thank you, Chair. Just to follow-up on Councilmember Yukimura's follow-up on the overpass. I think really, that is the

legal solution. You have not yet met with the State Highways or you have? Have you met with the State Highways?

Mr. Belles: No, we have not met on the issue of the overpass.

Mr. Hooser: Okay. No, but on the highway improvements fronting the property.

Mr. Belles: Just preliminarily.

Mr. Hooser: Okay, because it is my understanding that the State has a major project there to go to three (3) lanes, that it was funded, and I am not sure where the funding is now, but it is a major project. That project will require an EIS or an Environmental Review for Chapter 343 anyway. So, the State has to do that review to do the highway improvement. So, I would think that if this was a priority of yours, and you said it is, that you could talk to the State and express a willingness to work with them and to fund part of that overpass, if not all of it, in conjunction with the highway improvements. In that way, it is part of that improvement, it is not part of your improvement, but yet you have made the commitment to make it happen. At the end of the day, I think Councilmember Yukimura used the correct word. This is going to come back to haunt you. There is no question. I mean, it is just a matter of time and bad things could happen. We had the discussion, we talk about it, and we make a conscious decision not to do it, then later something bad happens and it makes it even worse for all of us. So, would you consider doing that when you talk to the State, making them some kind of commitment that when they move their highway improvements through, you would like to see an overpass and will help make it happen?

Mr. Belles: We have no objections to discussing anything with anyone. If this is a viable option that will not interfere with our timeline to rebuild and renovate the Coco Palms Hotel project pursuant to the Iniki Ordinance, then it is the case of leaving no stone unturned and it is something that as was suggested by other members of the Council, we may need the support of not only the County Council, but the County Administration working together working with State of Hawai'i Department of Transportation, perhaps the Governor's Office, and the State Legislature to see if this is something that we can do in a viable way and not invite legal problems that haunted the Superferry. It is as simple as that.

Mr. Hooser: Right, but the State has to comply with Chapter 343 to do the highway improvements. There is no question about that and so that will be based on whether there is three (3) lanes or four (4) lanes or two (2) lanes or whether there is a curb and gutter or whether there is an overpass. It will be an all-encompassing Environmental Review.

Mr. Belles: We will not refuse to talk to anyone about anything and this is something that we have a self-interest in seeing that this be done because it will make for a safer and expedient means of transportation for our clients as well as members of the general public.

Mr. Hooser: Thank you.

Mr. Greene: Something that we could offer is rather than wait another ninety (90) days until we see you folks next, is we could put our heads

together on this and have those conversations and then maybe in the next thirty (30) days give you an update on maybe possible options.

Mr. Hooser: That would be great.

Mr. Greene: Yes.

Mr. Hooser: Thank you. Thank you, Chair.

Chair Furfaro: Well, gentlemen, I know you did hear from us today about some challenges, but you also heard some encouragement and we did say “putting our heads together” not knocking our heads together. So, let us do it cooperatively and with as many agencies that will *kōkua* with you. I want to say that we do plan to see you in June and I would like to say that I would like to have a better understanding of brand selection and a better understanding of where we are talking about density. At one time, you told us we were going from three hundred ninety-five (395) maybe to three hundred twenty-five (325), but maybe we could have a better idea about the project density. One of the items that I think we need to also start talking about or having a better understanding is the financing of the project. I would like to think that is going to be really important when we get together in June to have an understanding of how that is all coming together because no hotel, not even Coco Palms when it opened with twenty-four (24) rooms, overnight was successful with one hundred percent (100%) occupancy. There is going to be some carry-in costs for a couple of years until it is recirculated on the map and we would like to hear about your finance and marketing plan as we go forward. Thank you very much for your time today and we will keep you posted, but we will see you in June.

Mr. Belles: Thank you, Mr. Chair and members of the Council for giving us this opportunity. It is something that helps us, gives us direction, and I think does show that there are times when a private landowner and developer can work hand in hand with the County and all other stakeholders to make for a better project. Thank you very much.

Chair Furfaro: Thank you very much, Mike.

Mr. Greene: Just one (1) last thing. We are just very grateful for your guidance and support. Thank you.

Chair Furfaro: Well, you will find that there is a lot of *aloha* here for Coco Palms and we are delighted to see as many associations, societies working with you to make this a success. Thank you. I am going to ask for any public comment. Remember, I am keeping public comment to three (3) minutes today because we have a really full, full agenda. Is there anyone that would like to add anything to the Coco Palms briefing at this point? Okay.

There being no one to provide testimony at this time, the meeting was called back to order, and proceeded as follows:

Chair Furfaro: I am recommending sometime in early June, for an update if that is acceptable to all of you. If not, I do want to move on to the next item with a simple receive for the day. A motion has been made.

The motion to receive C 2014-87 for the record was then put, and unanimously carried.

Chair Furfaro: Very good. Thank you very much. I am going to go right into the next item, which we had hoped to have on by about 3:00 p.m. and I want the Engineering Department to understand my instructions after I have this item read with the Kōloa flood area.

There being no objections, C 2014-89 was taken out of order.

C 2014-89 Communication (03/05/2014) from Council Chair Furfaro, requesting the presence of the County Engineer, to provide an update on the Ala Kalanikaumaka Street off-site drainage area and the efforts of the Department of Public Works to address the reported problems that occur following heavy rain.

Chair Furfaro: Thank you. For those of you who were not here earlier in the day, this is an agenda item that I put on the agenda possibly to get an update and just receipt, but members of the table indicated that if we took some testimony and there was strong enough testimony to move this to a Committee, then we would have that discussion with Engineering in a Committee level, not on the briefing level. If that is the case, if we know we are going to defer it to a Committee, I will not call Engineering up now, but refer it to that Committee Meeting. So, I would like to start if I can, with taking some testimony on this flood issue from the public and I will call up Mr. Abreu first.

There being on objections, the rules were suspended to take public testimony.

Chair Furfaro: If both of you can introduce yourselves and then each of you get three (3) minutes of testimony on your belief of why this item should be in Committee for further attention. We can make a decision about referring it at that time. Most of the work on the problem issue is done in Committee, not at full Council. If you can introduce yourselves, Mr. Abreu.

RUSSELL ABREU: My name is Russell Abreu and I represent the Church at Kōloa. I am one of the board members there and we have had an issue with the County for the last couple years and it is due to the flooding of the bypass road. We have met with the County prior to this, Engineering Department, stated our concerns, but we feel it has not been addressed and this is why we are this far in this endeavor. The reason for this is because I have been on that property since, well, I was born in the 1950s, but I have been on that property since 1959 as part of the Church, going there, raising a calf or two right on that property. We have never had any flooding or any kind of water coming through our property like it has been now since the bypass road has been passed. Once the bypass road was built, we felt the water was diverted to us and now it has become a safety issue. We have water coming through our property that never has been in prior years. I have explained it to the County Engineering Department, I took them to the site, I showed the where the old cane field road was, how the water used to come across the dip in that road, how it was towards the Kōloa roadside of the road, and went down to Waikomo Stream. It never did come to our property because the way it is built. Once that bypass road was in, they put a culvert in, they had to dig it fairly deep, and then the water directed to us. As I said, we have never had this type of flooding until that bypass road was built and now we feel it is a safety issue and the liability for our Church and the public in that area because we have a public cemetery back there, we have several rentals backs there, we have a lot of little

kids, and we just want this issue to be solved because again, it is a safety issue and the only answer we always got from the County was, well, they gave us an aerial shot. They did not consider any local knowledge of the area, people living in that area, over the years hunting in that area, knowing how the water used to go the other way, all that was not really...as far as I am concerned, was never even taken into consideration. As I said, the people that live there, the gentlemen that moved...

Ms. Fountain-Tanigawa: Three (3) minutes.

Mr. Abreu: ...the last home in that area, which now could be threaten by that water had a permit from the County, it was okayed by the County, that was never a Flood Zone, that one area that they claimed was a natural flow only had a twelve (12) inch culvert and if that was a natural flow, no way. You can just see how that bypass road...local knowledge as far as living there, I always knew that the water would either settle down on. If you either way you go up or down that road, going up to the Kalāheo area, the water would always settle back there and if it did really rain heavy, it would come over that road and as far as that is why the County experienced flooding and from there would come down and would stay on that old dispensary road, would stay on the Kōloa Road side of that property and went down to Wiakomo Stream. It never did come to us.

Chair Furfaro: Russell, thank you very much for that. Your timer went off and you stay right there. Cobb-Adams, if you can introduce yourself as well.

ROLLINA COBB: Rollina Cobb.

Chair Furfaro: Oh, not Cobb-Adams. I am sorry.

Ms. Cobb: I will send her my bills.

Chair Furfaro: Oh, okay. Very good. Go ahead.

Ms. Cobb: You have read most of the information and dialogue that has gone back. If you have heard Russell before, the message is the same, for some of you who have heard it. The concern is great and I have been assisting them to see how they can get this situation resolved. It is interesting because there are several factors. After or doing or prior to the culvert being built, there is some dumping area of dirt was done on the field that we are talking about. In addition, there is another dump, a holding area, of soil that has added to the flooding that will redirect the same water to a very dangerous area. I think the best thing, and I do not know when to predict it, is to see this property when it is really raining and flooding. The one time I went to check during the rainy season when we are flooding, just at the culvert that was installed on the road abutting the Church property, it was so heavy that the whirlpool started on both sides. It means that it was dangerous and that tells me a lot, that I made sure that we were on the right side so we would not get stuck just in case the culvert was done away with, but I think seeing this property in the rain when it is bad will show exactly what gravity did to that water crossing the bypass into the open area through the back of the Church and that becomes a safety issue for the County as well as the Church.

Chair Furfaro: Thank you.

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Chair Furfaro: Members, if you understood what I am saying is this, as you all know, most of this type of work is actually done in Committee. The Public Works / Parks and Recreation Committee Chair is Mr. Kagawa and I believe there is an opportunity here to refer this in three (3) weeks to your Committee, but I cannot make that motion.

Mr. Kagawa: I think I have a response from Public Works a while ago, maybe a year, regarding this issue and after having gone out with Councilmember Rapozo and Christiane from our staff, we brought out some of the concerns and we had a response back. So, I think I want to kind of refresh my memory as to what the response was. Staff is getting it right now. My recommendation is that we just finish off this item today. I think Larry is here prepared to give his response, but if the response is not sufficient and we feel like we need to get others involved in this issue such as Kukui'ula, then we can go to Committee. So, let us see how it flows and if we need to...no pun intended. Let us see how it goes and then we can decide if we need to refer it. Thank you, Chair.

Chair Furfaro: Again, I will depend on one of the Committee Chairs to make that recommendation. Any other comments at this time? If not, I am going to bring up Engineering and we are going to hear from them and then make a decision about referring it to Committee. Mr. Dill, if I can have you come over.

There being no objections, the rules were suspended.

LARRY DILL, P.E., County Engineer: Good afternoon Council Chair and member of the Council. For the record, Larry Dill, County Engineer.

Chair Furfaro: Can you introduce yourself? I heard Larry.

Mr. Dill: Yes, sure. I am sorry. Again, for the record, Larry Dill, County Engineer and with me I have Michael Moule who is our new Engineering Division Chief.

Chair Furfaro: Welcome, Michael.

MICHAEL MOULE: Thank you.

Mr. Dill: Michael, obviously being very new does not have a lot of the background, but has become pretty familiar pretty rapidly with this particular issue. What I have up there is a plan of the overall area. Can I have the laser pointer, Scott, please? Thank you. So, this is the Kōloa area obviously. Here is Kōloa Road coming down from the highway into Kōloa Town, intersection with Po'ipū Road, and this is Maluheai Road going up towards the tree tunnel back up to the highway, just to orient you. You see, we have house on Church property is the house that Mr. Abreu is referring to right about here. This, just showing you the dashed line, is the western bypass road, Ala Kalanikaumaka. So, what happened when this western bypass road was built, they experienced some flooding problems in the road. A lot of this happened prior to me coming on board with Public Works. So, this stuff was all constructed by that time I think. They sized some culverts underneath the bypass road and these culverts were meant to

accommodate...you can see that line in sort of a light purple, the drainage area that drains toward the culvert areas. So, all of the water from that drainage area I outlined, drains into those culverts. Now, downstream of that, very basic engineering. Water flows downhill. So, if you follow the contours here you can see there is a bend in the contour, which indicates and further down here a bend in the contours that this is basically the flow line for this drainage area. Now, there were a couple of old cane haul roads that crossed this alignment of that drainage swale or ditch if you will. So, in order to alleviate flooding because they were blocking the flow, these are not County roads. As Mr. Abreu pointed out, there was very small culvert probably eighteen (18) inch culverts at each of those things that were not accommodating the flow causing water during a significant rain event to back up in this area and flood Ala Kalanikaumaka. So, the developer or builder of the western bypass road, through their engineers, submitted a proposal to the County to basically improve this ditch and clean it out and I do not have the dimensions in front of me of the ditch. Do you have the cross-section? How wide is the body? Do you know? It made a regular trapezoidal channel I guess, from here down to the location and they cleaned it out and terminated just beyond the house over in this location. Also, as part of that, they have a permanent requirement that across this property from here down to just above that location, which is all one (1) property, that the owner of the property would be required to maintain that ditch. So, they have been maintaining the ditch fairly well and so it is doing its job. So, what that ditch does is it meets the requirements of the County Storm Water Runoff Manual and it damed the Hundred Year Storm within the limits of that ditch. There is an area a little bit upstream from this property where it exists the ditch a little bit and floods out of the ditch somewhat, but after it goes across here which is a forward crossing, then it does stay within the confines of the ditch pretty much. So, you are aware, forward crossing is designed and I think there are three (3) eighteen (18) inch pipes that were installed under this road at this location, but as a forward crossing, it is designed in a large storm, in a Hundred Year Storm for instance, that the flow would actually go through the culverts and over the road. So, that whole area has been concreted and riprapped so that in the event of a storm event like that, it would not tear out the road. So, pretty shortly after that was constructed, you may recall there was a very large storm event and it did go over the road. Fortunately, it did function as it was designed, but there is a lot of water going across that area, a lot of the water in the event of a storm and if it is going over fairly rapidly and fairly deep. We were recently out on the property again just to look at it because there were a few, I would say pretty minor things after the big storm event happened. There were a little bit of concern. We saw a little bit of erosion in some areas and at our request, Kukui'ula did go back and made some improvements. So, we wanted to check on the status of those and it looked pretty solid, stable, and functioning properly.

One thing I will note is as I mentioned, Kukui'ula and the owner of this property are committed to maintaining this ditch from the western bypass road down to their property line, which is just above this road. Below that road, it would help the Church's needs to get some maintenance accomplished adjacent to their property where that channel was created by this project because it is all over grown with a lot of vegetation and there are some thing that are blocking the drainage. So, I would recommend that the Church do at least help their own cause in that regard by cleaning that ditch out. So, I guess I would wrap up by saying what was submitted by the engineers and reviewed by the Engineering Division, the proposal did meet the requirements of our County's Storm Water Runoff Manual and it is functioning as designed.

Chair Furfaro: Okay. That is the end of the presentation?

Mr. Dill: Yes.

Chair Furfaro: I will have one (1) question for you and then turn it on to other members. So, the Memorandum of Understanding (MOU) as it relates to the maintenance, whose office has that on file and when was the last time it was reviewed?

Mr. Dill: The actual field work was reviewed or the actual document?

Chair Furfaro: The document that the County requested for an understanding of the maintenance of the area up to whatever point.

Mr. Dill: The last time it was reviewed was probably a year ago when Councilmember Kagawa mentioned that we forward that correspondence over.

Chair Furfaro: Actually, reviewed the document?

Mr. Dill: I beg your pardon?

Chair Furfaro: Actually, reviewed the MOU?

Mr. Dill: Yes.

Chair Furfaro: Okay. Mel, I will give you the floor and then I will go to JoAnn.

Mr. Rapozo: I do not want to waste time going into that because I think what I heard was that it is not going to change.

Mr. Dill: We have no plans to change anything right now.

Mr. Rapozo: Okay. Then I guess, Mr. Chair, I would ask that we refer this to the Committee because I think we definitely need some work. I do want to make another visit down there. I do want to go do a little bit more research on the history because I know one thing, that is was not happening before and it is happening now.

(Mr. Kagawa was noted as not present.)

Mr. Rapozo: Whether or not what was done was what was submitted and approved, if it is causing a safety issue down for the residents, then maybe that is something we have to take a look at. So, rather than belabor this point here, I would just say that we refer it to the Committee and we can go get more information.

Chair Furfaro: Okay. JoAnn and then Mr. Hooser.

Ms. Yukimura: I guess for Larry then, I do not know if you have pictures of the flooding or understand what was happening there, but is it your opinion that it is not damaging or dangerous to the Church or any residents there?

(Mr. Kagawa was noted as present.)

Mr. Dill: It is not damaging to any property. As I mentioned, there was a significant storm event where the water did come across the forward crossing. So, anytime it does come across, there is a lot of water coming fast at a significant depth, but it did survive that very well. As I mentioned, there were a few issues out there that we pointed and Kukui'ula came back and did a little bit of reinforcing and stabilizing of what was there and our recent trip last week, we went out to look at it, confirmed that was done and we did not see any further signs of erosion. Anytime you have a storm or a channel with that much water going through it, certainly it is a safety issue. So, people living in those areas, we have streams all over this island and they need to be aware of those sorts of things and take care.

Ms. Yukimura: Yes. When I was at the Lihue Business Association meeting on the diary this morning, they were mentioning a large storm in 2006 or something. When was this large storm or runoff? I mean, that was in the Kōloa area.

Mr. Dill: It would have been later than that. Do you know that year? 2012 I think it was, actually.

Ms. Yukimura: Okay. Alright. I hear those who have raised this issue want to have more extended discussion. So, I think I have my questions answered at least to the extent that I understand what your understanding is of the situation.

Chair Furfaro:

Mr. Hooser.

Mr. Hooser: Yes, thank you, gentlemen. If what Mr. Abreu said is true and I believe it to be so, and no one has denied that before this roadway was put in he did not have a flooding issue and now the roadway is put in and he has a flooding issue. I would think that if my neighbor made improvements on their property and after those improvements water flowed onto my property that was not there before, my neighbor is still responsible even if they made a good faith effort to do it the right way. So, either the County or the private landowner, I would think, would be responsible for the actions and if that is the case, is there something the County can do to mitigate that at this point rather than just tell the owner, "Well, we built it according to the specifications, we thought the specifications were okay, and it is your problem." Is there something the County can do or whoever? The responsible party, I think, is the responsible party. So, is there something that can be done?

Mr. Dill: Well, I respect Mr. Abreu's memory of how it used to be back then, but we have no evidence to suggest that there is a reason for it to be different than it was before. The caveat on that is as we know on this island, the plantation companies when they were around, they built extensive irrigation systems involving ditches that diverted water elsewhere over the years. So, a lot of water was diverted from its natural course. There were ditches in this area that we have some...I will not say plans, but on maps, there are some lines on some maps.

We went out there purposefully looking for those old ditches in the past. Now, the plantations are not around anymore, they do not maintain those ditch systems anymore, and so we saw the reminance of some of those ditch systems in various states of disrepair. So, my opinion is part of what is going on is the water is not being diverted anymore as it used to be by the plantation ditches. It is returning to its natural course. So, that is part of this issue, I believe.

Mr. Hooser: Okay. Just one (1) more question, Chair, if I could?

Chair Furfaro: Go ahead.

Mr. Hooser: If we put off for a second who is responsible, what can be done in your opinion? I mean, if the County chose to say, "Okay, we want to do something to help make this problem better," do you have any suggestions on what could be done to make that happen?

Mr. Dill: Nothing that I am prepared to say here.

Mr. Hooser: Okay. Perhaps when we hear in the Committee? Is it that you are not prepared or is it a legal type of thing you want to think about it?

Mr. Dill: Probably both.

Mr. Hooser: Okay. Thank you. Thank you, Chair.

Chair Furfaro: Mr. Kagawa.

Mr. Kagawa: I just want to kind of refresh. It was almost exactly a year ago, more than a year ago, that we wrote the first memorandum to you. So, that means we met with the Church members and Mr. Abreu, even prior to that. Basically, your response has basically not changed. In the letter we also asked you if you could help with some short-term solutions in regards to safety for children that may be in the area and that answer, we did not get a response. So, we asked for a possibility of erecting some type of fencing along the ditch. I too, hear what you are saying. I understand we cannot compare pre-sugar plantation days to now. I also know that when that road was built, the bypass, I think property owners expected maybe some of that water to flow down with the road, but I guess what was done was they created a culvert under the road that just lets the water from the mountains come all the way down. So, I think they did not want that road to create more water and it possibly did or is your answer that it was flowing down anyway without the road?

Mr. Dill: First of all, it is a basic engineering drainage precept that you shall not divert water from one watershed to another watershed. Having said that, the plantations did that all the time with their irrigation ditch system. So, when you put the road across there, the road basically goes through a small valley and comes back out again. So, it would be wrong to try and pick up the water out of the valley and dump it somewhere else in another valley because then definitely, you have impacted somebody that was not being impacted before. So, by putting a culvert at the low point of that road where the flow line of the valley was, it keeps that water in its natural path.

Mr. Kagawa: I guess what is hard to image for the residents that has been there for a long time is that we allowed a road to be built over areas that were vegetated and would soak in some of that water, but you clear a path for that road and knock down the vegetation and then put holes in there so the water just comes directly through at them, they have a hard time, I think, figuring how that is fair. I think I kind of agree with them, that if it added more water and perhaps maybe Kukui'ula can help and divert some towards their road as it goes down. I do not know.

Mr. Dill: I hear what you are saying, but I have a hard time agreeing that it "added more water."

Mr. Kagawa: Okay.

Mr. Dill: Because when I look at the contours and the topography, I just do not see how that makes sense, unless you take into account the divergence that were done in the past by the irrigation ditches by the plantations.

Mr. Kagawa: Well, for me, I work more from a, I think, common sense in trying to make it fair for the local residents, but I am not an engineer too and I should not be telling you what to do. If we can somehow, maybe we need more than just three (3) weeks, but I think if we can go and maybe do another site visit and perhaps I would even appreciate Larry, if I could go out with you and we can look at it. There was an issue about the neighbor too also stock piling things that may have been contributing to that issue. So, if we can maybe setup a date and we can go have lunch somewhere down there.

Mr. Dill: I want to say that we are more than happy to do this because I respect the concerns that the Abreus have about the property. You mentioned the stockpile. There was stockpile plan that was part of the proposal. It was done by Kukui'ula and the way they did the stockpile was a little different. I am not sure that it impacted the drainage that much, but we are working on them to confirm that. If it did, then we are going to have them revise that. So, we are going to make sure that it taken care of properly.

Mr. Kagawa: Thank you, Larry. Chair, my recommendation is that we go for five (5) weeks maybe on a referral to Committee.

Chair Furfaro: So, maybe before April 16th and if we can give some community members that have interest, maybe you visit the site by April 16th and then two (2) weeks after that, have it in the Committee?

Mr. Kagawa: I will go out on a Saturday if I have to, but we will find a way to get it done before five (5) weeks.

Chair Furfaro: What is the date just for this point after two (2) weeks past the 16th of April?

Ms. Fountain-Tanigawa: That would be the Committee Meeting of May 7th.

Chair Furfaro: May 7th? Okay. Because we are in Committee Meeting and we do not have one at the end of May. Mr. Hooser.

Mr. Hooser: If I could just ask that the Director that when you come back, if you could have some idea within your legal authority and within the whole liability issue, some perhaps ideas or suggestions on what might be done to resolve the issue and at the minimum, it would be helpful to me if I had some idea of the scale of the problem. Is this a five thousand dollars (\$5,000) problem or is this a five hundred thousand dollars (\$500,000) problem? That kind of thing. If somebody wants to fix it, about what are we looking at? Thank you.

Mr. Dill: I will definitely endeavor to do that, come back with a proposal for a reasonable solution for this. If the issue is the lack of maintenance and the disrepair of the irrigation ditches that used to carry water elsewhere, I do not know that if restoration of that irrigation ditch system is the answer. I do not know if that is a reasonable solution that I can come back with. I do not know sitting here today, what a potential "reasonable" solution is. Mr. Kagawa mentioned the issue of the fence which would be a strict safety measure to help things and that could be something that could be a solution or a part of a solution perhaps that we can certainly look at.

Chair Furfaro: So, if I heard the correct Larry, the approach and when we get back on May 7th if that is the date, we are going to look at if we have to put up some safety fencing on safety issues that is part of an estimate and then of course the actual flooding may be a lot more challenging to figure out, but two (2) parts to this?

Mr. Dill: I would also mention again, I think that the ditch, as it goes by the house, it needs to be maintained. It is all totally overgrown right now. That would help their own cause.

Chair Furfaro: Through an inspection, if that occurs, then certainly that is something that can come out of Public Works as a notice to the property owner.

Mr. Dill: Okay.

Chair Furfaro: Mr. Rapozo, did you have something? No?

Mr. Rapozo: No questions. Just a short comment.

Chair Furfaro: Okay. Well, I am going to say at this point, that we are looking for being back on the agenda in the Committee of Public Works / Park & Recreation by May 7th and sometime before that, to be inclusive with Mr. Abreu to be able to do an actual site inspection under the coordination of the Public Works / Parks & Recreation Chairman, Mr. Kagawa. Is that acceptable to you?

Mr. Dill: Absolutely.

Chair Furfaro: You can concur.

Mr. Moule: Me?

Chair Furfaro: Yes, you.

Mr. Moule: Yes, that is also acceptable to me, yes.
Sorry.

Chair Furfaro: I would like to see if we have anymore testimony and if not, I am looking for a motion.

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Chock moved to refer C 2014-89 to the May 7, 2014 Public Works / Parks & Recreation Committee Meeting, seconded by Mr. Kagawa.

Chair Furfaro: Okay, and it is understood that there will be a visit it the property before then. I have a motion and a second. Is there anyone else in the audience that wants to speak that had not spoken? If not, this item is going to be back on the agenda in the Committee on May 7th. You come up, but I have told everybody toady they can only speak once because we are so backlogged.

There being no objections, the rules were suspended to take public testimony.

Mr. Abreu: Also, at that time...

Chair Furfaro: Sit and relax, but just make a short statement.

Mr. Abreu: The thing is again, our concern is the flow of the water. Again, that has to be looked into. The direction, if that was the actual direction because to me, a simple test of this is just to plug up the culvert on the other side of the road and you see where the water would go. It would not come to our side. It would either go back to that way or filter through the property or go back across the road, but never did come to us. That is my main concern through all of this. Sure, the thing is working the way it is supposed to work, but is it in the right direction? That is my question.

Chair Furfaro: I think after that site inspection, they will have a better evaluation to share with us after that. Could you please make sure we have your phone number so that Mr. Kagawa can be in touch with you?

Mr. Abreu: Yes, I am sure he has it, but I will give it again.

Chair Furfaro: Great. Thank you.

Mr. Abreu: Thank you.

There being no objections, the meeting was called back to order, and proceeded as follows:

Chair Furfaro: Okay, we have a motion. There is no one else that wants to testify on this item. We have a motion as made on the referral for May 7th, any further discussion? Mr. Rapozo.

Mr. Rapozo: Yes. I just would encourage all of the members to go down and take a look at the area because it is very difficult when

you look at the sheet, very difficult if you look at photos. I think if you go down and take a look at the culvert, I think it is much more revealing to look at it that way. The other concern that I have is like Ross talked about, that the site visit Ross and I did was over a year ago and there was some safety issues. I heard Larry mention safety issues. It is a safety issue. It is not a convenience issue. It is not the fact that these people do not want the water running over the road. It is the fact that there are so many, what I see, as some serious safety issues with the children in the area playing in the culvert and getting stuck in that culvert. It is open. It is totally accessible. The suggestion to fence up that area was made again, over a year ago and that needs to be done. Something needs to be done to protect it, while we are debating whose fault or who is going to fix it or what, we need to protect that area so that kids do not go in those culverts because we all know how fast the water can come down. It often times comes without warning and I do not want to be here knowing that we could have done something and we did not. I had assumed...again, never assume, but I had assumed that those safety measures were taken between the time we had gone down there and today. So, I would just maybe send over a formal request that I do not care who does it. I do not care if Kukui'ula does it. If nobody does it, then the County has to do it. We have to protect the kids in that area and deal with the water issue later, but I think primarily, we have to make sure no kid gets hurt down there. I know the volume of water, I know that regardless of the storms that we have had in the last five (5) years, we have not have had a Hundred Year Storm. It has not been a Hundred Year Storm. So, I do not know if the road has to be elevated with larger culverts to allow for more water flow so it does not crawl over, if it is as simple as cleaning out the ditch, the landowner. We can require them to do that. As the County, we can require them to do it or we go in and clean it and charge them, bill them. We just cannot pretend it does not exist though. I will be heading down there again with Ross in the near future to take some pictures and see if we can get this thing resolved.

Chair Furfaro: If you can report back to the Committee, but I think we all take your recommendation from now until May 7th, it would not hurt for us to go down there individually. So, we have a motion, a second. Any further discussion?

The motion to refer C 2014-89 to the May 7, 2014 Public Works / Parks & Recreation Committee Meeting was then put, and unanimously carried.

Chair Furfaro: Please so note for a future calendar.
May 7th, Russell.

Mr. Rapozo: Mr. Chair?

Chair Furfaro: Yes.

Mr. Rapozo: If I may? I have a request and I do not do this often, but I am going to ask that we take an item out of order today. Mr. Wilson has been here since this morning and he would like to testify on Bill No. 2532, which is a Bill for Second Reading. He does have a flight to catch back to O'ahu. So, if there are no objections, if we could at least take his testimony so that he can leave, I would appreciate it.

Chair Furfaro: I have no problems with that.

Mr. Rapozo: Thank you.

Chair Furfaro: Jade, did you so note the Bill that we want to read? This is second reading. Could we read that into the record, please, and then we will allow Mr. Wilson to give testimony?

There being no objections, Bill No. 2532 was taken out of order.

BILL FOR SECOND READING:

Bill No. 2532 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2013-754, AS AMENDED, RELATING TO THE CAPITAL BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2013 THROUGH JUNE 30, 2014, BY REVISING THE AMOUNTS ESTIMATED IN THE BOND FUND – CIP AND SPECIAL TRUST FUND – CIP FOR PARKS & PLAYGROUNDS (*Black Pot Condemnation Balance - \$1,259,905*) Mr. Bynum moved to adopt Bill No. 2532 on second and final reading, and that is be transmitted to the Mayor for his approval, seconded by Ms. Yukimura.

Chair Furfaro: There is a motion to approve and a second. Is there anyone in the audience that wishes to testify?

There being no objections, the rules were suspended to take public testimony.

Chair Furfaro: You can come up now, Mr. Wilson.

RICHARD WILSON: Mr. Chair and members of the Council, thank you again. I am really here to testify about the Bill, not in opposition to it, but more of a procedural nature. It is my understanding that you folks have been led to believe that this is some sort of a victory for the County of Kaua'i and that when you look at the fees that have been spent, this is the last, this case is done, there is nothing further that is going to go on, and I am really here to set the record straight because it is not true. The real facts of this case are based on the last offer from the County and the jury awarded Mr. Sheehan one million dollars (\$1,000,000) more. We have been taking about mediation. We have been talking about negotiations. It was no negotiation. This is the bottom line. The jury order one million dollars (\$1,000,000). To get to that point, there was five hundred thousand dollars (\$500,000) in attorney's fees. There is two hundred fifty thousand dollars (\$250,000) of interest, which is still accruing which has not been paid. We will be appealing several issues by the Circuit Court. I am very confident there will be another award of interest in excess of two hundred fifty thousand dollars (\$250,000) because the calculations were wrong. If the Intermediate Court of Appeals agrees with our entire or all the issues of error, the County could be facing of upwards of millions of dollars of exposure. Those are the facts. So, to get to this Bill, it cost another almost one million dollars (\$1,000,000) in attorney's fees, costs, and interest. Members of the Council, if that is a victory, I do not know what a defeat is for you folk. It did not have to be that way. I have been coming here now, I think this is the fifth time this year and we have been taking about mediation. We have been talking about let us sit down. Let us stop the outside Counsel. Let us stop the bleeding. If you have somebody who is reasonable, maybe we disagree, but somebody serious enough to sue this County, it would behoove you folks to sit down and talk to that person. Chair Furfaro, I cannot remember if it was the last time I was here or the time before, you seemed to have a very strong opinion about that makes sense. We should talk before we run off to Court. There are four (4) pending matters between Mr. Sheehan and the County. They are in Federal Court, they are in State Court, and they are on appeal. I will be filing a fifth action as early as next week. I spoke with Mr. Sheehan and we had a long discussion. His point was,

well, you know what Rich, if the Council is that...not adamant, but that interested in mediation, why do you not talk to the County Attorneys and say, "All matters, the four (4) cases that are already in the court system, the fifth one we are going to file, no conditions, let us sit down and talk about it." So, I made the request. Do you know what you County Attorney's response was? No. We are not going to mediate with you. No. I did not make any preconditions, all matters. Let us talk about it. Bring in a retired neutral, a Judge. We have talked about that before, and the answer was no. I guess why I am here is sure, pay Mr. Sheehan the money, but this is a systemic problem and the County Attorney continues to have you folks write checks and it is troubling for me because as you folks know, I am from Kaua'i.

Ms. Fountain-Tanigawa: Three (3) minutes.

Mr. Wilson: My family lives on Kaua'i and there has to be some sort of change in the culture or the atmosphere at the County Attorney's Office because that one million dollars (\$1,000,000), it did not have to be spent. When we were here three (3) years ago, when the Council was down at Hale Kaua'i. Do not sue us. I now you folks get advice from the County Attorney's Office and Mr. Chair, it is just a shame that that money did not have to be spent. Thank you for taking me out of order. I really, really appreciate it. It is always nice to come home. Thank you very much, Mr. Chair and members of the Council.

Chair Furfaro: You have a question? My. Bynum has a question.

Mr. Wilson: Mr. Bynum.

Mr. Bynum: Mr. Wilson, under what circumstances does the County Attorney spend money or settle cases without authorization from this body?

Mr. Wilson: Well, I could go into a lot of detail on how it seems there is a pattern in practice where you folks are not being updated on budgets by...

Mr. Bynum: Mr. Wilson, the question is, under what legal circumstances does the County Attorney make decisions to spend County money that is not authorized by this body?

Mr. Wilson: For example, not mediating with litigants where you would not have to spend money because obviously you folks have the purse strings, but it seems to me that it is a systemic issue where the County Attorney continues to come to you for money, putting you in a position where you have no choice. To me, sure, the underlying decision is yours to make, but you are with very few options. When you are already going down a litigation standpoint and you have been advised to continue to litigate as opposed to mediate.

Mr. Bynum: So, the County Attorney cannot settle a case. They cannot decide. You said the County Attorney has you spending this money. They can only ask us to spend money. Is that not correct?

Mr. Wilson: That is not correct and I do not want to talk about your lawsuit.

Mr. Bynum: Okay.

Mr. Wilson: I do not want to go down that road.

Mr. Bynum: Neither do I.

Mr. Wilson: You are forcing me to...in terms of answering that question, you are forcing me to...

Mr. Bynum: I am done.

Mr. Wilson: ...go down your road.

Mr. Bynum: You have already answered my question. I am done.

Chair Furfaro: Mr. Rapozo has a question for you.

Mr. Wilson: Yes.

Mr. Rapozo: When you testified that you have...let me just see if I have this right. You have one (1) Federal, one (1) State, two (2) cases you said in mediation right now?

Mr. Wilson: No, they are on appeal.

Mr. Rapozo: Oh, on appeal. I am sorry.

Mr. Wilson: And I will be filing a fifth as early as next week.

Mr. Rapozo: Okay. So, you said that you had made a request to the County Attorney's Office to mediate potentially all?

Mr. Wilson: All of it.

Mr. Rapozo: All four (4) or you would not file the fifth?

Mr. Wilson: All four (4), I would not file the fifth, and let us resolve it all. By the way, my only other requirement, I should say my one (1) precondition was to have one (1) of you folks or a Committee present during mediation so you can see for yourselves as to what the process is, what the positions are, and it is not filtered through the County Attorney's Office.

Mr. Rapozo: When was that request to mediate or your offer to mediate made?

Mr. Wilson: Within the last two (2) weeks. If you would like, I can send you the correspondence to the County Attorney's Office.

Mr. Rapozo: That would help. I am not so sure how that is going to affect the vote today, but that would definitely help. When was the...I am assuming you testified that the County Attorney said, "No."

Mr. Wilson: That is correct.

Mr. Rapozo: When was that?

Mr. Wilson: Earlier this week.

Mr. Rapozo: Early this week?

Mr. Wilson: Yes.

Mr. Rapozo: Okay. I am not sure, and maybe the Chair received some communication from the County Attorney's Office. I did not. So, it would help me if you send me whatever you have.

Mr. Wilson: I will give you the correspondence.

Mr. Rapozo: Thank you.

Chair Furfaro: If you are going to send it to Mr. Rapozo, you might as well send it to me as well.

Mr. Wilson: I will do that, Chair.

Chair Furfaro: I want to make sure you are really clear on my statement. So many times I sit here and people say, well, you said this and...in my professional career, I have sat through mediations with Unions, with owners, and with construction companies. I do not need to go to one over here and learn how to walk. When it comes to understanding audits, I have not only been the challenged person for the ownership representative of audits with management companies, but I have gone through it enough times that I know the moving parts, but I want to tell you, you are correct. Going forward, mediation is always good and this Money Bill to acquire Black Pot Beach Park was my Money Bill in 2003. My Bill. My daughter's grandfather was the only registered Coast Guard Captain for the Hanalei estuary in Captain Henry Gomes. It means a lot to me. I have talked to Mike many times, but the opportunity initially to enter into some agreement whatever happened, did not and now we are at this point where to me, we have come a long way and it is unfortunate, but there is a lesson here. It is always good to exchange ideas and discussion. I just think we are a little too far and I need to share that with you Mr. Wilson.

Mr. Wilson: Well, Mr. Chair, with respect to this matter because the Money Bill is front of you folks, I understand, but there are other pending issues. The one thing I disagree in my experience as a litigator for twenty-three (23) years, there is never inappropriate or too late to talk. It is always good to talk because litigation as you folks know, is so incredibly expensive. When you have somebody on the other side, I would like to think I am reasonable and most people probably think that I am, but when we are offering no conditions to really involve you folks into it, I would think that would be a golden opportunity to stop the bleeding, let us talk about it, and you have done it in the past. Even if it does not resolve matters, what it does is it gets the parties closer to an understanding and maybe you can narrow the issues. There are no guarantees as well know and that is all we wanted. It is just unfortunate, but I appreciate the time again, Mr. Chair and members of the Council. Thank you very much.

Chair Furfaro: One (1) more.

Mr. Wilson: Yes.

Chair Furfaro: Councilmember Yukimura.

Ms. Yukimura: So, is there any reason why passing this Bill
before us will prevent mediation?

Mr. Wilson: No, not at all.

Ms. Yukimura: Okay. Thank you.

Chair Furfaro: Thank you very much for being here.

Mr. Wilson: Thank you very much.

Mr. Rapozo: I guess, one (1) more real quick.

Chair Furfaro: Oh, excuse me.

Mr. Rapozo: So, I guess the offer is still there to talk?

Mr. Wilson: Absolutely.

Mr. Rapozo: Okay. Thank you.

Chair Furfaro: And I want to reconfirm, you are going to send
the material to myself and Mr. Rapozo?

Mr. Wilson: I will be back in the office tomorrow. In fact,
Mr. Chair, if would like I can send it to all members of the Council.

Chair Furfaro: I would appreciate it if you would let it come
into my office so that I can distribute it.

Mr. Wilson: Okay, I will give you the copies.

Chair Furfaro: Thank you. Mr. Hooser.

Mr. Hooser: Yes. Just to be clear, you made an offer to the
County Attorney to mediate outstanding issues?

Mr. Wilson: Correct.

Mr. Hooser: And that was in writing?

Mr. Wilson: Yes.

Mr. Hooser: And the response from the County Attorney,
was that in writing or was the verbal?

Mr. Wilson: Verbal. Actually, I believe it was verbal and it
was confirmed in an E-mail saying, "You are right, the answer is no."

Mr. Hooser: And there was not an answer, "I need to talk to the Council or make me an offer and then we will talk about it?" It was just "no."

Mr. Wilson: I think it came from the County Attorney himself, "No."

Mr. Hooser: Okay. Thank you.

Chair Furfaro: Thank you again.

Mr. Wilson: Thank you again.

There being no further public testimony, the meeting was called back to order, and proceeded as follows:

Chair Furfaro: We need to finish our business on this item, but I want to let you know that our Housing Agency needed to leave on a First Reading Bill and I have excused him. He is traveling and since it is only a First Reading Bill, when we get to that I hope you understand I made that decision that he could leave. Jade, we are going to move on a vote on this item right now. Before that, any further discussion? Mr. Bynum.

Mr. Bynum: I always appreciate any testimony before this Council, but I am also really comforted by the fact that there is a public record of our proceedings that people can if they choose to take the time to find out about the accuracy of the public testimony we receive. I will just make one (1) comment. Yes, let us mediate now that I am in appeal because you have won all of your motions. So, it is like you mediate at the beginning of something, not at the end of something. We are bringing this to an end unless the appeals are successful. Just on the face of it, you mediate after you have won when you are in appeal? It does not make any sense to me. So, thank you.

Chair Furfaro: Members, we had a speaker for this item who had signed up for Bill No. 2532. I apologize. Besides Mr. Wilson, Shaylene had signed up. Shaylene, I am going to go back to suspend the rules and give you three (3) minutes.

There being no objections, the rules were suspended to take public testimony.

SHAYLENE ISERI: Good afternoon Council Chair, Vice Chair Chock, and members of the Council. One million two hundred five thousand dollars (\$1,250,000) is an exorbitant amount of money that is still unclear for many members of the public what it is being spent for, was it really necessary for it to have been spent, and how many more moneys will be spent in this matter and related matters. The problem is especially amplified because most of the discussions are done in Executive Sessions and it appears certain information about lawsuits are discussed in open session that only support a position instead of giving the public the totality of the information so that the constituents can make informed decisions. I would ask that the Council take a proactive approach to being fiscally responsible in bringing a resolution to this issue that has been ongoing for decades. How much have we spent on Special Counsel to defend this lawsuit? Why are we hiring Special Counsel if we have numerous amounts of County Attorneys? Are they inexperienced? Are there conflicts? How many more moneys are expected to be spent? What has been the barrier to resolving this case and related cases? How much effort has been exerted to

seek a resolution other than trial? There are in my opinion, many opportunities for this Council to provide a briefing to the public of the status of these lawsuits, yet the public is kept in the dark under the cloak of Executive Sessions. For example, if this was a jury trial case as it seems to have been as it was discussed, this is public and the Council has a duty, I believe, as our representatives in this case and others to provide the dates and results of the motions filed and the jury verdicts if that was the result of the case. Executive Sessions leave a bad impression in the public's mind and the volume of Executive Sessions negatively impact the confidence that the people have in our representatives. Let us bring more openness and transparency to the community and try to resolve these with the public's interest in mind. Thank you.

Mr. Trask: Aloha Chair and members of the Council, Second Deputy County Attorney, Mauna Kea Trask. I apologize for not having a tie at this time. I was going to check on something else.

Chair Furfaro: You are forgiven. It is *aloha* Thursday.

Mr. Trask: Thank you.

Chair Furfaro: I want to make sure that my reconciliation of this, is this is not more money that is being spent. This is money that is being returned to the County and being transferred into the Parks and Recreation account.

Mr. Trask: Yes, Chair. What this is, is this represents the last amount of money that is owed to Mr. Sheehan in order to finalize the purchase of the property. One million three thousand dollars (\$1,003,000) of this money is part of the original five million eight hundred ninety thousand dollars (\$5,890,000) that was put into the Clerk of the Court for the motion for possessing pending litigation. We got an updated appraisal and that number was brought down, we took the money back, put it in another account, and then we need the Money Bill to put it back and to pay out. There is a difference. Three hundred thousand dollars (\$300,000) of the money that was taken by the County was put in the General Fund to satisfy Mr. Sheehan's back taxes. So, that is where the Parks Fund money kicks in.

Also, too, regarding the statements made by Mr. Wilson regarding settlement. We did discuss. We met a couple weeks ago regarding another matter with Mr. Sheehan, talking about discovery issues and the proposal for mediation came up. I took it to the office and discussed it with Mr. Castillo. I wrote an E-mail Mr. Wilson earlier this week saying I am going to be getting back to you with a written letter regarding your proposal and you can expect it by the end of the week. I am almost done drafting that letter. It should go out by tomorrow. He asked, "Well, basically is it yes or no?" My recollection is that I wrote in the E-mail, "Well, it is not no." Of course I cannot say it is yes, but I just talked to him about it and he said, "No, you said no." So, if I said that I am going to have to correct that E-mail. It is not no. I am working on that letter because, and you will see why, but again, as was stated earlier we are interested in mediating. Mr. Bynum makes a good point, but given that it is likely to appeal, we are willing to sit down. We thought in essence, we would like to discuss a more detailed proposal to bring to you to make that discussion and have that discussion at a later date and whether or not to approve. So, we are going to speak and speak further, but for various reasons, it was recommended that we get more specific. So, that is essentially the letter that I am going to send to him tomorrow.

Chair Furfaro: My question to you as the Administrator of the Council, myself, is it your intention to copy me on that letter?

Mr. Trask: Well, actually I did not think about that. I was going to have the discussion with Mr. Wilson first and then when it is right to bring to you, I was going to bring it to you.

Chair Furfaro: When the appropriate time comes, you do plan to copy me so that I can inform the Council?

Mr. Trask: Definitely. There is just issues relating to...yes, I can do that and we will do that.

Chair Furfaro: I am requesting that.

Mr. Trask: Then I will definitely do it, Chair.

Chair Furfaro: Thank you. Al, did you want to say something?

ALFRED B. CASTILLO, JR., County Attorney: Yes. Council Chair and Councilmembers, good afternoon. Al Castillo, County Attorney. I do not want to cast a shadow or a cloud over what is going on with the acquisition of Black Pot Beach Park because it is a good thing for the community. Months and months ago when Mr. Wilson was here or Mr. Sheehan, they did talk about coming to the table and we did go to the table and the record will show exactly how genuine they were way back then and how genuine we were. Now, what is really happening here is and the people out there should know. When you want to come to the table, come to the table with facts and figures. With the facts and figures what we can do is what I told Mauna Kea, is with the facts and figures, genuine facts and figures, then and only then we can come to the Council and present it to the Council. We do not want to waste time with just idle talk, and idle chat. We want facts and figures and we want to resolve it as much as anybody else. Yes, reasonable. We want to be reasonable, but we want facts and figures. That is all that I want you folks to know.

Chair Furfaro: Mr. Rapozo has a question for you.

Mr. Rapozo: Thank you, Mr. Chair. So, you think it is okay to say "no" to an offer to mediate without having a...even if it is a non-genuine. I think once you say "no," it is no versus coming here and coming to us and say in Executive Session, "We have a non-genuine request to..." versus because I think that is where for me anyway, we are running into issues. These things, we do not know. The Council does not know and yet, I think we should.

Mr. Castillo: Well, Councilmember Rapozo, we have lived with this case for months and we have established a level of relationship with the other side. We will not waste the Council's time. If there is a genuine offer that we should bring, then we will bring it. We do not want to waste your time. If you feel like we should come to you...it is our responsibility as your attorneys if there is an offer. Yes, then we come, but we need to know what that offer is. At his point in time, we do not know what the offer is.

Mr. Rapozo: Well, it is hard for me because I have not seen the E-mail or the letter that was sent. So, I guess once I see that, it might be easier to judge, but I guess...

Mr. Castillo: Judge...excuse me. Yes, but my information was we did not have any information to judge.

Mr. Rapozo: Well, I do not know what was provided. That is my point. I would have felt much better if we had gone in there and you tell us what was not genuine and that in fact let the Council decide whether or not we are going to because at the end of the day, it is the people's money. It is the public's money. It is not your money. It is not our money. So, I think it would be best for everybody that if there is and again, that is why we rely on your expertise to tell us if it is genuine or not, if you think we should go or not, but I do not think that you should be making the decision to not mediate without talking to us first. That is all I am saying.

Mr. Castillo: I need to correct that Councilmember Rapozo because we are not making that decision not to mediate. We need information on a basis for me to contact the Council Chair to ask for agenda time because we have information, genuine information to give to the Council. We have not reached that point.

Chair Furfaro: Okay. That is understood at this point.

Mr. Castillo: Thank you.

Chair Furfaro: I want to make sure you also understand this. You are our attorneys and there is a sense of urgency here. I have been on the Council for twelve (12) years. I have had opposing attorneys walk in and want to talk to me directly. I have told them kindly to leave my office. They speak to me through my attorney. So, if there is anything over here that is going on with this dialogue, is we are now all aware of it, Mr. Rapozo has requested and I have piggy backed on that to get Mr. Wilson's correspondence, and whatever you send please make sure that we are copied.

Mr. Trask: I would just like to...I will speak with Mr. Wilson about this in a minute, but given that there is pending litigation, there is an issue of when clients are represented and attorneys speak to represented parties, but then there is also an extra layer of you are the County Council so there is some different aspects to it because you are a public body, people have the right to speak at public forums. So, I will speak to Mr. Wilson about that, but per what Mr. Castillo said, we still are or obviously there is a generally offer out there. I wanted to get more specifics and I will speak to Mr. Wilson if we can work that out, then we can avoid further communications that do not involve just the attorneys. We still need to talk about that.

Chair Furfaro: Understood. I just want to let you know, I understand. When you have opposing attorneys and there is litigation, I do not talk to them, so that you know. That is not the appropriate practice, but Mr. Rapozo has made the request, Mr. Wilson is going to fulfill it, and now you are aware of it. You still have the floor.

Mr. Rapozo: Okay. I guess Mauna Kea, it is three (3) weeks, four (4) weeks, five (5) weeks ago I asked a question about this case because Mr. Sheehan had come up and said that the case was far from over. Then I called up Mr. Castillo and he said that as far as he knew, the case was over. Then, I am hearing that you have pending cases in Federal Court, State Court, and you have two (2) appeals. I do not know if you are inferring or you folks are inferring that I should not

be talking to Mr. Wilson or I should not be talking to anyone. He came up to testify here. I wish I had spoken to him before so I could have gotten the information that I do not have today. Maybe you have it. I do not know if you have the...

Mr. Trask: I do have the E-mails and actually, again, my recollection was basically we are not saying no at this point and I was going to write a letter to him for more clarification. That is kind of...I am not insinuating that it is improper to speak to you again, because you are Council, but it is complex and I wanted to have that discussion with Mr. Wilson to iron out those generalities so that we can bring forth to you the proposal. Like Mr. Castillo said, if there is one, if we can come to terms with the proposal. I apologize it is taking a little while. I am currently working on responses regarding another Money Bill of five hundred thousand dollars (\$500,000) and going through all of that. So, it is taking me some time to juggle some things, but I do intend to get the letter to him tomorrow and he basically knows what it is about now. I just want to say that if we can have some time to work this out and bring to you what it is, then that would be appropriate.

Mr. Rapozo: Okay. I guess like I said, when I see the E-mail, I will be able to...this is how I look at it though because you are my attorney, your office is my attorney. Let us say I went and got arrested, I got charged and I have an attorney and the prosecutor calls my attorney and says, "Hey, we have a deal for you. Do you want to talk about this deal" and my attorney says, "No." Never called me, just said, "No, I do not think it is in the best interest of my clients," I would fire you if I found out that is what happened. Do you know what I am trying to say? So, when you have these developments whether it is genuine or not in your opinion, we are the client and I guess I am feeling that I am not a client. I am feeling like the County Attorneys are going to do what they do and they are just going to tell us what the result is. That is where I am having a difficult time Mauna Kea. I hope you can appreciate that because I do look at you as our private attorney, personal attorney, that should be communicating with us, at least with the Chair anyway.

Mr. Trask: Yes, and we are having that discussion with Mr. Wilson now with that intent.

Mr. Rapozo: Okay, and I appreciate that. Thank you.

Mr. Trask: Thank you.

Chair Furfaro: Thank you, Mel.

Mr. Castillo: Council Chair?

Chair Furfaro: Yes.

Mr. Castillo: Can I correct a statement that was made on the floor?

Chair Furfaro: If it needs to be corrected, this is the place to do it because this is the record.

Mr. Castillo: Thank you. This is the second time that I need to correct Councilmember Rapozo. On this subject matter, I did not tell him, "As far as I knew the case was over." When I came up here, what I did say was, "Mauna Kea had that case, there is a time for appeal, and I do not know if that time had

expired.” I did not ever say that the case is over because I did not have that information.

Chair Furfaro: That is your clarification on the matter. Mauna Kea, I guess you can see all the urgency we have right now to make sure you copy us on what is transpiring between attorneys.

Mr. Trask: I will.

Chair Furfaro: You will? Is that what I heard?

Mr. Trask: Yes.

Chair Furfaro: Yes, Mr. Hooser?

Mr. Hooser: Just a brief...it seems to get more confusing as the conversation goes on. So, Mr. Wilson pretty clearly sat here and said he made an offer to mediate and the County Attorney said, “No.” Now, Mr. Trask, you said you sent an E-mail to Mr. Wilson saying, “I am not saying no.” So, do I have my facts correct?

Mr. Trask: The original proposal was an oral proposal by Mr. Wilson when we were discussing another matter. I said, “Okay, send me something in writing more specific so I can show, essentially Al.” Then I talked with Al about it and he said, “Look, you need more specifics” and I took some notes. You need a, b, c, and d. I believe it was over the Prince Kūhiō holiday, I E-mailed Mr. Wilson. I said, “Hey, just so you know and keep you in the loop, I am going to be drafting a letter. I will be sending to you a written regarding some things that we discussed and how to deal with the situation.” So, he said, “Okay, yes or no, basically.” Then what I wrote to him was...well, how do you answer that question? So, I said, “Well, it is not no.” He said, “Look at your E-mail again, you said no.” So, I am going to go look at that E-mail again, but what I meant to write was, “It is not no” because of course, I am working on drafting a letter right now. So, if I made that mistake in the E-mail, that is my fault. That is not Al’s fault because he did not say, “No.” It is get a letter more specific. So, that is what I am working on right now.

Mr. Hooser: Okay. So, you did not intend to say “no,” but you may have said no and you are going to check on it?

Mr. Trask: I am going to check, but I mean to say, “Not no” because again, I am writing a letter currently.

Mr. Hooser: Okay, thank you.

Chair Furfaro: I just want to clarify something over here. I mean, in my life in Senior Management and I know between attorneys you folks play a lot of hardball and then all of a sudden we find ourselves over here needing to interpret how you folks negotiate. Your responsibility is to this Council, bringing fair, objective, and reasonable offers to us. How you get to that negotiation is why you went to law school. Okay? Now, let us move on. We expect to hear from everybody and again, I do not like opposing attorneys coming in and talking directly to me. That is not good practice. They go through my attorney and in this case, you are our attorneys. I want to give Mr. Wilson another three (3) minutes just simply because

there has been a lot of dialogue over there that he needs to say something and that is it.

Mr. Wilson: Thank you, Mr. Chair. Well, if what I am hearing, is it not a no, it is a maybe yes, then that is great news. If that is what they meant by it, that is great. On this matter about more specifics, because in the E-mail, I went over the four (4) pending cases as well as the one we are going to file, a mediation is...I do not mean to be condescending or pejorative, it is not rocket science. This is an issue. The County Attorneys who represent you folks know the cases, they know what the issues are. It does not require some party to go and basically do a settlement conference statement outlining every single exposure, defense, claim, and odds. Here is the issue, we are going to mediate it. That is what the...I am preaching to the choir here, Mr. Chair, because you have done it before. For the other folks who have not done it, that is why you go to the mediator and you discuss. Al says that we have a relationship. I do not have a relationship with Mr. Castillo. I have one with Mauna Kea. The problem is a lot of decision making is not made by Mauna Kea. It goes through Mr. Castillo, which I do not have a relationship with for whatever reason, but you do not need to go into the umpteenth detail for another party to agree to sit down and talk. That is all this is and if the County's position now is sure, maybe there is some other information. We are not sure, but we do not do it as much as you do. If you want to mediate, that is terrific and if that is what the County Attorneys are saying, then great. I look forward to getting Mauna Kea's letter. I hope we get to mediate. The only request that I would make again, is that a member of this Council participate. Thank you very much for the extra time, Mr. Chair.

Chair Furfaro: I do want to tell you one other thing here.

Mr. Wilson: Yes, sir?

Chair Furfaro: There are two (2) members of the choir and the other one over here sits at the end of the table. His name is Mr. Kagawa. We both played a lot of baseball in our time.

Mr. Wilson: Me too.

Chair Furfaro: And we know that there are games within the game within the game. Okay? What I want that comes to me through my attorney is the real score card. Who got ahead, who got how many balls and strikes, and so forth? So, I just want to make sure that you understand.

Mr. Wilson: Oh, I fully understand.

Chair Furfaro: I am watching every moving part of this game and...

Mr. Wilson: I fully understand.

Chair Furfaro: Very good.

Mr. Wilson: Thank you very much, Mr. Chair.

There being no objections, the meeting was called back to order, and proceeded as follows:

Chair Furfaro: Okay. I think we are at a point, we have to take a caption break. Am I correct? I think we actually went over a little bit of extra time. So, I am going to call for a caption break and we will come back for discussion. Ten (10) minute caption break. Be back at 5:35 p.m.

There being no objections, the Council recessed at 5:25 p.m.

There being no objections, the meeting was called back to order at 5:40 p.m., and proceeded as follows:

(Mr. Rapozo was noted as excused.)

Chair Furfaro: We are back from our recess and I do want you to know accordingly, I had Mauna Kea's E-mail copied to all of you folks. If you can please note in all fairness, his E-mail starts off by saying, "It is not a no." Okay? In all fairness.

Ms. Yukimura: That is pretty clear.

Chair Furfaro: So, there is another interpretation there, but anyway, I needed to get that cleared. Now, we need to vote on this item here.

Mr. Kagawa: Discussion?

Ms. Yukimura: Discussion.

Chair Furfaro: And have discussion. Do I have a motion? Okay. I will go with Mr. Bynum, then Mr. Kagawa, and then JoAnn. Mr. Bynum, you have the floor.

Mr. Bynum: I just want to expand a little bit of what I said earlier when I thought we were in discussion. I am comforted that there is a public record and I am very concerned about some precedence that have been said at this Council over the last few months. I do not know what to do about it necessarily, but things have changed. I have been on this Council for nine (9) or ten (10) years. I do not remember litigants coming up and testifying in the middle of a lawsuit. I do not remember citizens making allegations of corruption and mismanagement based on personnel matters that they have legally, no authority to know the details of, get blamed for doing things that you did not even initiate, that you are responding because of your responsibility. To have the dialogue we had today about an E-mail that was sent yesterday or not and the minutia between our attorneys I agree with the Chair. I do not talk with litigants when we are in cases. I know what those boundaries are. So, this thing of people coming up here and saying these rhetorical things when we cannot defend ourselves because we are acting responsibly by keeping the confidentiality that we are legally responsible for. So, you have all of these things said and cannot defend yourself, you cannot defend, you cannot even correct the record. Now, we had the County Attorney up here today doing something unprecedented that I applaud. He corrected the record because I have watched our County Attorney. I have heard incredible things said about our Mayor, about our County Attorney, about all of these allegations, and it is not appropriate to respond. This, I do not know what to do about it, but this is not right. We should not be having this kind of dialogue and this kind of back and forth about this E-mail. Unbelievable. These are bad precedence and so I just wanted to say that out loud. Thank you.

Mr. Kagawa: Thank you, Chair. The word “genuine” was used a lot in this short discussion. So, I looked it up on the Webster Dictionary and it says, “actual, real, or true; not false or fake; sincere and honest.” In this world of lawsuits and litigation, it is very difficult to find genuine. I think what the attorneys try to do is they try to get whatever they can. So, try and be as disingenuous as they can because that leads to a better payoff for their client. So, I really think any time that we have a litigant who wants to discuss mediation, I think we need to listen and I am not a big fan of mediation as you have seen in recent months, but I do believe it is our obligation and the County Attorney’s obligation to listen to any offer to mediate. I think we can decide after we hear what the offer is whether we feel it is genuine or not genuine, but if somebody offers to settle a lawsuit against us, please do the listening and let us see if it is genuine. Let us not decide before we listen if it is genuine or not. Thank you, Chair.

Chair Furfaro: Thank you, Mr. Kagawa. Councilmember Yukimura.

Ms. Yukimura: Thank you. I was part of the Kaua’i Public Land Trust (KPLT) when KPLT tried to negotiate with Mr. Sheehan to acquire the properties that we are talking about and pass it on to the County, much as we did with the Hodge property, which was adjacent then to Black Pot Beach Park. There was a huge discrepancy between what Mr. Sheehan said publicly and what he was actually willing to do. Then, we had a similar experience when the County began negotiations with Mr. Sheehan. We made huge efforts to come to agreement. We did not want to go to court, but there was no other way to achieve our goal of acquiring Black Pot Beach Park. Special Counsel was not hired to defend the County. It was hired to help us accomplish our goal of acquiring these properties to expand Black Pot Beach Park by fairly compensating Mr. Sheehan for the value of the property. So, I feel like we have been very cooperative as much as we could be and then we had to keep moving toward our goal, and I am really happy today to be able to vote for this Bill that is going to finally bring this project to fruition.

Chair Furfaro: Thank you. Anymore before I call for the vote? No? Okay, we have a motion and a second, and we have enough here to have a vote. So, please do a roll call vote, please.

The motion to adopt Bill No. 2532 on second and final reading, and that it be transmitted to the Mayor for his approval, was then put, and carried by the following vote:

FOR ADOPTION:	Bynum, Chock, Hooser, Kagawa, Yukimura, Furfaro	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Rapozo	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Six (6).

Chair Furfaro: 6:0 ayes, thank you very much. What I would like to do, I have just for the Council, any representatives that were here for Bills for First Reading, I have let them go home because we will have opportunities in Second Bill Readings. I would like to be able to handle some discussion on the item for Mr. Dill. Mr. Dill, that item number...

Ms. Fountain-Tanigawa: It is on page 5, C 2014-95.

Chair Furfaro: Thank you. Could you read that one as Mr. Dill finds his way up?

There being no objections, C 2014-95 was taken out of order.

LEGAL DOCUMENT:

C 2014-95 Communication (02/24/2014) from the County Engineer, requesting Council approval of the State-County Memorandum of Agreement (MOA) Implementation of County Federal-Aid Highway Projects and Programs: Mr. Kagawa moved to approve C 2014-95, seconded by Mr. Bynum.

Chair Furfaro: Okay, this is on the MOU. Larry, if you want to give us some narrative.

There being no objections, the rules were suspended.

Mr. Dill: Certainly. Thank you, Chair. Good evening Council Chair Furfaro and members of the Council. We have before you today, requesting your approval for execution of this State-County Agreement for Federal-Aid Projects. Real briefly, as you are well aware, we are fortunate to receive for many of our roadway and transportation projects, funding from the Federal Highways Administration. The Administration basically grants money through the State, to the County and the other Counties as well for the County to implement these projects. Every party has certain responsibilities and this agreement, which we have never had in place before though many State have had in place. Federal Highways is looking to add some formal (individual) to the way that this process is worked out between the Counties and the States. It identifies what the Counties are required to do and what the States are required to do. Basically, we are required to comply with all laws in place. As you probably know, there are many Federal laws we have to comply with in prosecuting these projects and it lets the State know what their responsibilities are for administering the program to the Counties. We have been discussing this agreement with the State for the last several months. They have also been working with the other Counties. Our attorneys, I want to give credit especially to Jodi Higuchi, our Public Works attorney who has been working hard on this agreement and also according with the other corporation Counsels from the various Counties. We have finally got it to the point now where all of the Counties are bringing it to their various Councils for approval. So, that is my brief presentation on this. I am happy to answer any questions if I can.

Chair Furfaro: Okay. We will start with Mr. Bynum. Your microphone.

Mr. Bynum: Thank you very much. Just one (1) question. So, this is the same MOU in each County?

Mr. Dill: Yes. Actually, you may notice that all the Counties will be executing this single document.

Mr. Bynum: Right.

Mr. Dill: Yes.

Mr. Bynum: And it has a Dispute Resolution Section?

Mr. Dill: Yes.

Mr. Bynum: Thank you.

Chair Furfaro: Thank you for pointing that out. Other questions for Mr. Dill? Councilmember Yukimura.

Ms. Yukimura: Yes, thank you. It seems like a good idea to have a written agreement. So, in Section 4 on page 3, looks it like the County is responsible for designating a qualified full-time public employee to be responsible and serve as the overall point of contact. Who in the County, will that point of contact be?

Mr. Dill: All of the points of contact are listed on page 15.

Ms. Yukimura: I see.

Mr. Dill: You will notice for the County of Kaua'i, it is the County Engineer. So, I am the designated point of contact as far as this agreement is concerned for overall oversight of the program. Now that we have hired a Chief for the Engineering Division, I have let him know that it may will be that it will move into his responsibility at some point, but for now, I am the designated point of contact.

Ms. Yukimura: Okay. Thank you.

Chair Furfaro: So, you have the authority to anoint the new hire?

Mr. Dill: Yes.

Chair Furfaro: I see. I guess that is the way authority works, right? Any further questions for Mr. Dill? If not, thank you Mr. Dill.

Mr. Dill: Thank you.

Chair Furfaro: We have two (2) other people in the audience, but they are not here for this particular item.

There being no objections, the meeting was called back to order, and proceeded as follows:

Chair Furfaro: Jade, we have a motion and a second. So, is there is any further discussion before I call for a vote? If not, this is a roll call? No, this is a grant.

The motion to approve C 2014-95 was then put, and carried by a vote of 6:0:1 (*Mr. Rapozo was excused*).

Chair Furfaro: Thank you very much, Larry for staying. Enjoy your evening. We have a few housekeeping things that need to be done. I would like to clean this up for the next ten (10) minutes and then I think we are waiting for the Auditor to go into Executive Session before that, but let us clean up some housekeeping items.

Ms. Fountain-Tanigawa: This is on page 4.

Chair Furfaro: On page 4 everyone.

C 2014-92 Communication (03/14/2014) from the Director of Economic Development, requesting Council approval to accept a donation from the Hawai'i Natural Energy Institute (HNEI) for building energy monitoring at 3990 Ka'ana Street, valued at \$64,072, to include hardware, setup, monitoring, data collection, reporting, and suggested retrofit strategies for the facility: Mr. Chock moved to approve C 2014-92 with thank-you letter to follow, seconded by Mr. Kagawa.

(Mr. Bynum was noted as not present.)

Chair Furfaro: Any further discussion?

The motion to approve C 2014-92 with thank-you letter to follow, was then put, and carried by a vote of 6:0:1 *(Mr. Rapozo was excused)*.

Chair Furfaro: Next item.

Ms. Fountain-Tanigawa: Next item is on page 5.

CLAIMS:

C 2014-97 Communication (03/07/2014) from the Deputy County Clerk, transmitting a claim filed against the County of Kaua'i by Felicia Cowden, for damage to her personal property, pursuant to Section 23.06, Charter of the County of Kaua'i: Mr. Kagawa moved to refer C 2014-97 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Ms. Yukimura.

Chair Furfaro: We have a second from JoAnn?

Ms. Yukimura: Yes.

Chair Furfaro: Thank you. Any discussion?

The motion to refer C 2014-97 to the County Attorney's Office for disposition and/or report back to the Council was then put, and carried by a vote of 6:0:1 *(Mr. Rapozo was excused)*.

Chair Furfaro: Next item, please.

C 2014-98 Communication (03/10/2014) from the Deputy County Clerk, transmitting a claim filed against the County of Kaua'i by Paul Noboru Applegate, for damages to his vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i: Mr. Kagawa moved to refer C 2014-98 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Ms. Yukimura.

Chair Furfaro:

Second by JoAnn. Further discussion?

The motion to refer C 2014-98 to the County Attorney's Office for disposition and/or report back to the Council was then put, and carried by a vote of 6:0:1 (*Mr. Rapozo was excused*).

Chair Furfaro:

Thank you. Next item.

COMMITTEE REPORTS:

FINANCE & ECONOMIC DEVELOPMENT (TOURISM / VISITOR INDUSTRY / SMALL BUSINESS DEVELOPMENT / SPORTS & RECREATION DEVELOPMENT / OTHER ECONOMIC DEVELOPMENT AREAS) COMMITTEE:

A report (No. CR-FED 2014-16) submitted by the Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee, recommending that the following be Received for the Record on second and final reading:

"C 2014-53 Communication (02/05/2014) from Councilmember Bynum, requesting the presence of the Director of Finance and the Budget & Purchasing Director, for a broad discussion and presentation on the budget trend analysis and identified challenges for the upcoming Fiscal Year 2014-2015 budget session for the County of Kaua'i,"

Mr. Kagawa moved for approval of the report, seconded by Ms. Yukimura, and carried by a vote of 6:0:1 (*Mr. Rapozo was excused*).

A report (No. CR-FED 2014-17) submitted by the Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee, recommending that the following be Received for the Record on second and final reading:

"Bill No. 2530 A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO.B-2013-753, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2013 THROUGH JUNE 30, 2014, BY REVISING THE AMOUNTS ESTIMATED IN THE GENERAL FUND (*Police Department – Chief's Office, Regular Overtime - \$500,000*),"

Mr. Kagawa moved for approval of the report, seconded by Ms. Yukimura, and carried by a vote of 6:0:1 (*Mr. Rapozo was excused*).

A report (No. CR-FED 2014-18) submitted by the Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee, recommending that the following be Approved on second and final reading:

"Bill No. 2532 A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2013-754, AS AMENDED, RELATING TO THE CAPITAL BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII,

FOR THE FISCAL YEAR JULY 1, 2013 THROUGH JUNE 30, 2014, BY REVISING THE AMOUNTS ESTIMATED IN THE BOND FUND – CIP AND SPECIAL TRUST FUND – CIP FOR PARKS & PLAYGROUNDS (*Black Pot Condemnation Balance - \$1,259,905*),”

Mr. Kagawa moved for approval of the report, seconded by Ms. Yukimura, and carried by a vote of 6:0:1 (*Mr. Rapozo was excused*).

Chair Furfaro: Next item.

RESOLUTIONS:

Resolution No. 2014-11 – RESOLUTION ESTABLISHING THE REAL PROPERTY TAX RATES FOR THE FISCAL YEAR JULY 1, 2014 TO JUNE 30, 2015 FOR THE COUNTY OF KAUAI: Ms. Yukimura moved to schedule a public hearing on May 7, 2014 at 5:00 p.m., and that it thereafter be referred to the Committee of the Whole, seconded by Mr. Kagawa.

Ms. Fountain-Tanigawa: Roll call.

Chair Furfaro: I think we had a second from Ross. Thank you. Any discussion?

(*Mr. Bynum was noted as present.*)

The motion to adopt Resolution No. 2014-11 was then put, and carried by the following vote:

FOR ADOPTION:	Bynum, Chock, Hooser, Kagawa, Yukimura, Furfaro	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Rapozo	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Chair Furfaro: Next Resolution, please.

Resolution No. 2014-12 – RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE CIVIL SERVICE COMMISSION (*Nancy P. Golden*)

Chair Furfaro: This is a deferral.

Mr. Kagawa moved to defer Resolution No. 2014-12 pending interview, seconded by Mr. Chock, and was carried by the following vote:

FOR DEFERRAL:	Bynum, Chock, Hooser, Kagawa, Yukimura, Furfaro	TOTAL – 6,
AGAINST DEFERRAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Rapozo	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Chair Furfaro: Deferred. Next item, please.

Resolution No. 2014-13 – RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE LIQUOR CONTROL COMMISSION (*Paul N. Endo*):

Mr. Kagawa moved to defer Resolution No. 2014-13 pending interview, seconded by Mr. Chock.

Chair Furfaro: No discussion on a deferral.

The motion to defer Resolution No. 2014-13 pending interview was then put, and was carried by the following vote:

FOR DEFERRAL:	Bynum, Chock, Hooser, Kagawa, Yukimura, Furfaro	TOTAL – 6,
AGAINST DEFERRAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Rapozo	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2014-14 – RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE PUBLIC ACCESS, OPEN SPACE, AND NATURAL RESOURCES PRESERVATION FUND COMMISSION (*Karen M. Ono*)

Ms. Fountain-Tanigawa: Council Chair, we received a memorandum dated March 27th from Paula Morikami withdrawing Ms. Ono's name as she is a Mayoral appointment.

Mr. Kagawa moved to receive Resolution No. 2014-14 for the record, seconded by Ms. Yukimura.

Chair Furfaro: Question? Yes.

Mr. Bynum: I just wanted to thank Karen for her service. There was a mistake that we did not need to approve it, but she is going to be an excellent member of that Commission.

Chair Furfaro: Yes, she is going to be.

Mr. Bynum: I thank the Mayor for a good appointment.

Chair Furfaro: Yes, the Mayor's appointee does not get our confirmation. Let us move to receive.

The motion to receive Resolution No. 2014-14 for the record was then put, and carried by the following vote:

FOR RECEIPT:	Bynum, Chock, Hooser, Kagawa, Yukimura, Furfaro	TOTAL – 6,
AGAINST RECEIPT:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Rapozo	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Chair Furfaro: Next item, please.

Resolution No. 2014-15 – RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE SALARY COMMISSION (*Lenie F. P. Nishihira*): Mr. Chock moved to adopt Resolution No. 2014-15, seconded by Mr. Kagawa.

Chair Furfaro: I do want to comment. She was an excellent, excellent candidate and a great interview this morning.

Ms. Yukimura: Great.

Chair Furfaro: Any further discussion? Mr. Kagawa.

Mr. Kagawa: I missed the interview, but I read her resume or application and it was outstanding with her accounting background and what have you. So, I want to thank again, Paula and Lenie, for bringing great Board members. Thank you.

Chair Furfaro: Thank you. This is a motion to approve.

The motion to adopt Resolution No. 2014-15 was then put, and carried by the following vote:

FOR ADOPTION:	Bynum, Chock, Hooser, Kagawa, Yukimura, Furfaro	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Rapoza	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Resolution No. 2014-16 – RESOLUTION AUTHORIZING THE FILING OF THE KAUAI COUNTY 2014 ACTION PLAN (COMMUNITY DEVELOPMENT BLOCK GRANT) WITH THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, UNITED STATES OF AMERICA, FOR A GRANT UNDER TITLE I OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974 AND 1987 (PUBLIC LAWS 93-383 AND 100-242), AS AMENDED

Chair Furfaro: One moment before we have the deferral. We have a member who wants to speak.

Ms. Yukimura: I just want to recuse myself. Thank you.

Chair Furfaro: She wants to recuse herself. Do not go far.

Ms. Yukimura: I will not.

(Ms. Yukimura was noted as recused from Resolution No. 2014-16.)

Chair Furfaro: Go ahead, Mr. Kagawa.

Mr. Kagawa moved to defer Resolution No. 2014-16 to the April 23, 2014 Council Meeting, seconded by Mr. Chock.

Chair Furfaro: We have a motion to defer and a second. No discussion on a deferral.

The motion to defer Resolution No. 2014-16 to the April 23, 2014 Council Meeting was then put, and carried by a vote of 6:0:1:1 *(Mr. Rapozo was excused and Ms. Yukimura was recused)*.

Chair Furfaro: Ask Councilmember Yukimura to come back in. There we go.

(Ms. Yukimura was noted as present.)

BILLS FOR FIRST READING:

Proposed Draft Bill (No. 2537) – A BILL FOR AN ORDINANCE RELATING TO THE OPERATING BUDGET AND FINANCING THEREOF FOR THE FISCAL YEAR JULY 1, 2014 TO JUNE 30, 2015 (*Mayor's Operating Budget*): Mr. Kagawa moved for passage of Proposed Draft Bill No. 2537 on first reading, that it be ordered to print, that a public hearing thereon be scheduled for May 7, 2014 at 5:00 p.m., and that it thereafter be referred to the Committee of the Whole, seconded by Mr. Chock.

Chair Furfaro: Further discussion? Roll call.

The motion for passage of Proposed Draft Bill No. 2537 on first reading, that it be ordered to print, that a public hearing thereon be scheduled for May 7, 2014 at 5:00 p.m., and that it thereafter be referred to the Committee of the Whole, was then put, and carried by the following vote:

FOR PASSAGE:	Bynum, Chock, Hooser, Kagawa, Yukimura, Furfaro	TOTAL – 6,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Rapoza	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Six (6) ayes.

Chair Furfaro: Six (6) ayes. Thank you. Next item.

Proposed Draft Bill (No. 2538) – A BILL FOR AN ORDINANCE RELATING TO CAPITAL IMPROVEMENTS AND FINANCING THEREOF FOR THE FISCAL YEAR JULY 1, 2014 TO JUNE 30, 2015 (*Mayor's CIP Budget*): Mr. Kagawa moved for passage of Proposed Draft Bill No. 2538 on first reading, that it be ordered to print, that a public hearing thereon be scheduled for May 7, 2014 at 5:00 p.m., and that it thereafter be referred to the Committee of the Whole, seconded by Mr. Chock.

Chair Furfaro: Further discussion? If not, roll call vote, please.

The motion for passage of Proposed Draft Bill No. 2538 on first reading, that it be ordered to print, that a public hearing thereon be scheduled for May 7, 2014 at 5:00 p.m., and that it thereafter be referred to the Committee of the Whole, was then put, and carried by the following vote:

FOR PASSAGE:	Bynum, Chock, Hooser, Kagawa, Yukimura, Furfaro	TOTAL – 6,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Rapoza	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Six (6) ayes.

Chair Furfaro: Six (6) ayes. Thank you. Next item.

Proposed Draft Bill (No. 2539) – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. PM-2004-370, AS AMENDED BY ORDINANCE NO. PM-2010-400, AND ORDINANCE NO. PM-2005-374, RELATING TO THE KUKUI'ULA WORKFORCE HOUSING: Mr. Chock moved for passage of Proposed Draft Bill No. 2539 on first reading, that it be ordered to print, that a public hearing thereon be scheduled for April 23, 2014, and that it thereafter be referred to the Planning Committee, seconded by Mr. Kagawa.

Chair Furfaro: Further discussion? If not, roll call, please.

Ms. Fountain-Tanigawa: Chair, there is something that we need to check on quickly for this one. If I could just put this to the end?

Chair Furfaro: We will put it right to the end.

Proposed Draft Bill (No. 2540) – A BILL FOR AN ORDINANCE AMENDING ARTICLE 17, CHAPTER 8, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO NONCONFORMING USE CERTIFICATES FOR SINGLE FAMILY VACATION RENTALS: Mr. Chock moved to refer Proposed Draft Bill No. 2540 to the Planning Commission, seconded by Mr. Kagawa.

Chair Furfaro: It is referred to the Planning Commission.

Ms. Yukimura: Sorry.

Chair Furfaro: This Bill takes the fees from five hundred dollars (\$500) to seven hundred fifty dollars (\$750) on approved Transient Vacation Rentals (TVR). This will raise approximately one hundred thousand dollars (\$100,000) for the year. Further discussion? If not, roll call for a referral to the Planning Commission.

The motion to refer Proposed Draft Bill No. 2540 to the Planning Commission, was then put, and carried by the following vote:

FOR REFERRAL:	Bynum, Chock, Hooser, Kagawa, Yukimura, Furfaro	TOTAL – 6,
AGAINST REFERRAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Rapoza	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Six (6) ayes.

Chair Furfaro: Thank you.

Ms. Fountain-Tanigawa: Chair, if we could go back to proposed Draft Bill No. 2539.

Chair Fufaro: Sure.

Ms. Fountain-Tanigawa: It did come from the Planning Commission.

Chair Fufaro: Okay. So, this is not a referral to the Planning Commission.

Ms. Fountain-Tanigawa: No, we can enteratin it now in Council.

Chair Furfaro: We can?

Ms. Fountain-Tanigawa: Yes.

Chair Fufaro: So, we have the motion and second, right?

Ms. Fountain-Tanigawa: Yes.

Chair Furfaro: Further discussion? If not, roll call again. I am sorry.

The motion for passage of Proposed Draft Bill No. 2539 on first reading, that it be ordered to print, that a public hearing thereon be scheduled for April 23, 2014, and that it thereafter be referred to the Planning Committee, was then put, and carried by the following vote:

FOR PASSAGE:	Bynum, Chock, Hooser, Kagawa, Yukimura, Furfaro	TOTAL – 6,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Rapoza	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Six (6) ayes.

Chair Furfaro: Six (6) ayes.

Proposed Draft Bill (No. 2541) – A BILL FOR AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 14, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO THE PUBLIC ACCESS, OPEN SPACE, AND NATURAL RESOURCES PRESERVATION FUND: Mr. Chock moved for passage of Proposed Draft Bill No. 2541 on first reading, that it be ordered to print, that a public hearing thereon be scheduled for April 23, 2014, and that it thereafter be referred to the Planning Committee, seconded by Mr. Bynum.

Chair Furfaro: Further discussion? Mr. Bynum and then Councilmember Yukimura, or Councilmember Yukimura, you can go first.

Ms. Yukimura: Okay. I just want to say I do not agree with this Bill, but I will be voting to have it pass on first reading so we can go to the public hearing and hear what people have to say about it.

Chair Furfaro: Okay. Mr. Bynum.

Mr. Bynum: Thank you. Similar. I am going to vote for this today. I just want to note for the record that this is an Administration Bill that I introduced by request and I am looking for alternatives for this particular measure, but for now, I am going to support it today.

Chair Furfaro: Okay. So, I want you folks to know that I do support this Bill and I have shared with you that as we increase the fees for the public acquisition, we have also then increased all of the costs associated with the acquisition such as appraisals, legal fees, and so forth. This Bill may make some of that money available as long as it is for the land piece. That is how I understand it at this point and that is my comment. I do not need a lot of discussion on this, but if you disagree with me, disagree with me, but I am just telling you I can support it. Go ahead.

Mr. Bynum: I just want to make sure we are talking about the same Bill. This is a Bill that reduces our contribution to the Open Space Fund?

Chair Furfaro: This says that our minimum will be one-half percent (0.5%), but can go up as high as one and a half percent (1.5%).

Mr. Bynum: Okay. We are talking about the same Bill, so we can...

Chair Furfaro: But then if it goes up to one and a half percent (1.5%) and we have a large acquisition and so forth, we will not be going to the County Attorney's budget for legal fees associated with acquisition. So, we can have more discussion as we go...

Mr. Bynum: Sure, I am happy to save that discussion.

Chair Furfaro: Mr. Hooser.

Mr. Hooser: Yes, we will have lots of discussion in the weeks ahead on these and we all acknowledge that the budget is going to be a very difficult process for all of us, but I also think it is important to telegraph to a certain extent how we are feeling about certain things as we move forward. So, I feel compelled also to share the concerns expressed by Councilmember Yukimura and Councilmember Bynum. We have a very difficult time at the end of the day in supporting this measure, but I realize that there are a lot of tough choices ahead. Thank you very much, Chair.

Chair Furfaro: Again, I telegraph clear enough. Very good. The reason again, I hope we can go after some large acquisitions and money is tight. Anyway, any further discussion?

The motion for passage of Proposed Draft Bill No. 2541 on first reading, that it be ordered to print, that a public hearing thereon be scheduled for April 23, 2014, and that it thereafter be referred to the Planning Committee, was then put, and carried by the following vote:

FOR PASSAGE:	Bynum, Chock, Hooser, Kagawa, Yukimura, Furfaro	TOTAL – 6,
AGAINST PASSAGE:	None	TOTAL – 0,

EXCUSED & NOT VOTING: Rapozo
 RECUSED & NOT VOTING: None

TOTAL – 1,
 TOTAL – 0.

Ms. Fountain-Tanigawa Six (6) ayes.

Chair Furfaro: Thank you.

Proposed Draft Bill (No. 2542) – A BILL FOR AN ORDINANCE AMENDING SECTION 21-9.2 OF THE KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO INTEGRATED SOLID WASTE MANAGEMENT: Ms. Yukimura moved for passage of Proposed Draft Bill No. 2542 on first reading, that it be ordered to print, that a public hearing thereon be scheduled for April 23, 2014, and that it thereafter be referred to the Committee of the Whole, seconded by Mr. Bynum.

Chair Furfaro: Not the Convention Hall.

Ms. Yukimura: I was asleep, Chair.

Chair Furfaro: Further discussion?

The motion for passage of Proposed Draft Bill No. 2542 on first reading, that it be ordered to print, that a public hearing thereon be scheduled for April 23, 2014, and that it thereafter be referred to the Committee of the Whole, was then put, and carried by the following vote:

FOR PASSAGE:	Bynum, Chock, Hooser, Yukimura, Furfaro	TOTAL – 5,
AGAINST PASSAGE:	Kagawa	TOTAL – 1,
EXCUSED & NOT VOTING:	Rapozo	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: 5:1.

Chair Furfaro: 5:1.

Proposed Draft Bill (No. 2543) – A BILL FOR AN ORDINANCE AMENDING SECTION 5-2.3, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO THE COUNTY MOTOR VEHICLE WEIGHT TAX: Ms. Yukimura moved for passage of Proposed Draft Bill No. 2543 on first reading, that it be ordered to print, that a public hearing thereon be scheduled for April 23, 2014, and that it thereafter be referred to the Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee, seconded by Mr. Bynum.

Chair Furfaro: Second by Mr. Bynum. Discussion? If not, roll call, please.

The motion for passage of Proposed Draft Bill No. 2543 on first reading, that it be ordered to print, that a public hearing thereon be scheduled for April 23, 2014, and that it thereafter be referred to the Finance & Economic Development (Tourism / Visitor Industry / Small Business Development / Sports & Recreation Development / Other Economic Development Areas) Committee, was then put, and carried by the following vote:

FOR PASSAGE:	Bynum, Chock, Hooser, Yukimura, Furfaro	TOTAL – 5,
AGAINST PASSAGE:	Kagawa	TOTAL – 1,
EXCUSED & NOT VOTING:	Rapoza	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: 5:1.

Chair Furfaro: 5:1?

Ms. Fountain-Tanigawa: Yes.

Chair Furfaro: Okay. We have Bills for Second Reading.

Ms. Fountain-Tanigawa: This is Bill No....

Chair Furfaro: This is one to receive, I believe, right?

Ms. Fountain-Tanigawa: Yes.

BILLS FOR SECOND READING:

Bill No. 2530 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2013-753, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2013 THROUGH JUNE 30, 2014, BY REVISING THE AMOUNTS ESTIMATED IN THE GENERAL FUND (*Police Department – Chief's Office, Regular Overtime - \$500,000*): Mr. Chock moved to receive Bill No. 2530 for the record on second and final reading, seconded by Mr. Kagawa.

Chair Furfaro: I have a second by Mr. Kagawa, a first by the Vice Chair.

The motion to receive Bill No. 2530 for the record on second and final reading was then put, and carried by the following vote:

FOR RECEIPT:	Bynum, Chock, Hooser, Kagawa, Yukimura, Furfaro	TOTAL – 6,
AGAINST RECEIPT:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Rapoza	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Six (6) ayes.

Chair Furfaro: Just for clarification, I thought perhaps on receiving the Bills for Second Reading, it would have just been a voice vote.

Ms. Yukimura: Me too.

Chair Furfaro: Oh, you thought that same way?

Ms. Yukimura: Yes.

Chair Furfaro: Very good. Where do we go from here then?

Ms. Fountain-Tanigawa: We have one (1) Executive Session, that is ES-714 and one (1) corresponding open session item which is on page 4, C 2014-94.

Chair Furfaro: So, perhaps at this time, we could see if want to hear from the County Auditor?

Ms. Fountain-Tanigawa: If we wanted to get into Executive Session, we could get the County Attorney.

Chair Furfaro: Yes.

Ms. Fountain-Tanigawa: If they could read ES-714.

Chair Furfaro: On that note, for just clarification, the County Auditor could be invited into the Executive Session?

Ms. Fountain-Tanigawa: As a resource person.

Chair Furfaro: Just want to make sure.

Ms. Fountain-Tanigawa: Yes.

Chair Furfaro: As a testifier for the Bill. Go ahead, Al.

There being no objections, the rules were suspended.

Mr. Castillo: Thank you. Council Chair and Councilmembers, good evening, Al Castillo, County Attorney. The next matter for your consideration is ES-714.

EXECUTIVE SESSION:

ES-714 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and (8) and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney, requests an Executive Session with the Council, to provide the Council with a briefing as it relates to the retention of Special Counsel to represent the Office of the County Auditor regarding the release of the Fuel Audit, and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

Mr. Castillo: Thank you.

Chair Furfaro: Thank you.

There being no objections, the meeting was called back to order, and proceeded as follows:

Chair Furfaro: Mr. Kagawa.

Mr. Kagawa: Did you want a motion?

Chair Furfaro: Yes, please.

Mr. Kagawa moved to convene in Executive Session for ES-714, seconded by Ms. Yukimura.

Chair Furfaro: Is there any further discussion? If not, which has been my practice for Executive Sessions to go by a roll call vote. County Auditor, did you want to speak on this?

There being no objections, the rules were suspended.

ERNESTO G. PASION, County Auditor: For the record, Ernesto G. Pasion, County Auditor. I want the public to know the reasons for my asking for Special Counsel. The Chartered operations of the Office of the County Auditor's are important and it must be kept with the highest level of honesty, integrity, openness, transparency, completeness, and fairness to all parties involved. The Special Counsel will be guiding and assisting me with the proper legal process, language, and determining the legal issues and concerns necessary to issue the final Fuel Audit Investigation Report. The privacy interests and protection of individuals and County employees who provided testimony are paramount and need to be protected. This Special Counsel will also be assisting us in this important area. Rest assured that this is not personal. This process is in conformance with the provisions of the Generally Accepted Government Auditing Standards (GAGAS) or the Yellow Book and the County Charter. I firmly believe that the Office of the County Auditor cannot be effectively, objectively, and ethically represented by the County Attorney on this particular audit because the County Attorney and the former First Deputy County Attorney represented and advised County officials and personnel who were subpoenaed for their alleged direct and indirect involvement in the use of County fuel for personal use in the investigation hearings. Pursuant to Generally Accepted Government Auditing Standards, also known as the Yellow Book, provide the following reporting requirements:

- Section 7.03 Auditors must issue audit reports communicating the results of each completed performance audit.
- Section 7.04 The auditor should use a form of the audit report that is appropriate for its intended use
- Section 7.05 The purposes of audit reports are to (1) communicate the results of audits to those charged with governance, the appropriate officials of the audited entity, and the appropriate oversight officials; (2) make the results less susceptible to misunderstanding; (3) make the results available to the public, unless specifically limited; and (4) facilitate follow-up to determine whether appropriate corrective actions have been taken.
- Report Findings: Section 7.14 In the audit report, auditors should present sufficient, appropriate evidence to support the findings and conclusions in relation to the audit objectives.
- Section 7.23 When fraud, noncompliance with provisions of laws, regulations, contracts, or grant agreements, or abuse either have occurred or are likely to have occurred, auditors may consult with authorities or legal counsel about whether publicly reporting such information would

compromise investigative or legal proceedings. Auditors may limit their public reporting to matters that would not compromise those proceedings and, for example, report only on information that is already a part of the public record.

- Section 7.39 If certain pertinent information is prohibited from public disclosure or is excluded from a report due to the confidential or sensitive nature of the information, auditors should disclose in the report that certain information has been omitted and the reason or other circumstances that make the omission necessary.
- Section 7.40 Certain information may be classified or may be otherwise prohibited from general disclosure by Federal, State, or local laws or regulations. In such circumstances, auditors may issue a separate, classified or limited use report containing such information and distribute the report only to persons authorized by law or regulation to receive it.
- Section 7.41 Additional circumstances associated with public safety, privacy, or security concerns could also justify the exclusion of certain information from a publicly available or widely distributed report. The auditors may consult with legal counsel regarding any requirements or other circumstances that may necessitate the omission of certain information.
- Section 7.42 Considering the broad public interest in the program or activity under audit assists auditors when deciding whether to exclude certain information from publicly available reports. When circumstances call for omission of certain information, auditors should evaluate or conceal improper or illegal practices.
- Section 7.43 When audit organizations are subject to public records laws, auditors should determine whether public records laws could impact the availability of classified or limited use reports and determine whether other means of communicating with management and those charged with governance would be more appropriate. The auditor may consult with legal counsel regarding applicable public records laws.

Thank you.

Chair Furfaro:
Councilmember Chock, please.

Councilmember Yukimura and then

Ms. Yukimura:
read?

Ernie, may we have a copy of what you just

Mr. Pasion:

Sure.

Ms. Yukimura: And are you aware of an opinion from either I guess it would be the Disciplinary Counsel, that determines when there is conflict or interest among attorneys? Do you have any reading of that or has...

Mr. Pasion:
Councilmember.

I have it not explored that one,

Ms. Yukimura: Oh, okay. Alright. Thank you.

Mr. Pasion: Hopefully, I do not have to go there.

Ms. Yukimura: Yes, and I am remembering, I think it is the attorneys actually who go the Board. They usually are the official body. Thank you.

Chair Furfaro: Mr. Chock.

Mr. Chock: Thank you, Chair. In my short time here, we have fielded a lot of concerns and requests from the community, the public, about the need to not only share the findings of the audits that had been done by your office, but also to be able to see that there is some progress being made on that outcomes of the findings that you created. My question is just to ask you, do you agree that it is in the best interest for us to share as much as possible from these audits?

Mr. Pasion: Yes.

Mr. Chock: Thank you.

Chair Furfaro: Mr. Hooser.

Mr. Hooser: Yes, Mr. Pasion, how are you?

Mr. Pasion: Fine, Mr. Hooser.

Mr. Hooser: I want to restate just so I have it clear. The Fuel Audit was done before I was elected to the Council I believe, over a year ago?

Mr. Pasion: Yes.

Mr. Hooser: And now, it is complete and the desire is to release it? Is that correct?

Mr. Pasion: That is correct. I am obligated by, as I read to you, the provisions of the Yellow Book or the Charter that the office is obligated to issue an audit report.

Mr. Hooser: Okay. Clearly, it was in the media that there were some preliminary conclusions or something. Was there a partial release before? What happened?

Mr. Pasion: Well, the first one was a limited one just to cover some irregularities that were uncovered in the use of purchase of gasoline stored at the different...

Chair Furfaro: Base yards.

Mr. Pasion: Base yards and also the use of credit cards issued to the Transportation Agency for the use of their vehicles.

Mr. Hooser: And that was release already? That one?

Mr. Pasion: Yes.

Mr. Hooser: And that had some controversial or contentious finding in that one. Now this is a different one that went more detailed, more in-depth into the same facilities?

Mr. Pasion: Yes, this one involved the overall and then also the investigations that were done and that is the reason why there is a need for Special Counsel to guide me in what is legal to release to the public for public consumption.

Mr. Hooser: So, your office wants to release this, but you are concerned that if it is done improperly, it could expose the County or employees to legal action?

Mr. Pasion: Thank you for mentioning that because there were some people that were willing to come up and provide testimony to what they knew about what was going on.

Mr. Hooser: So, you believe you need outside Counsel to advise you on how to properly do this?

Mr. Pasion: That is correct.

Mr. Hooser: And you believe the County Attorney's Office is not in the position to do this properly for you?

Mr. Pasion: Yes.

Mr. Hooser: Okay.

Mr. Pasion: Because they are directly conflicted by their participation.

Mr. Hooser: Okay. Thank you very much.

Mr. Pasion: You are welcome.

Mr. Hooser: Thank you, Chair.

Chair Furfaro: Yes, I would thank you for those questions because I think that gets to the heart of what the Auditor is asking, to make sure that the release is appropriate. Councilmember Yukimura and then Mr. Kagawa. You had your hand up, right? Go ahead, JoAnn.

Ms. Yukimura: So, Ernie, is this the first audit report where you are asking for Special Counsel?

Mr. Pasion: I believe so, because of the nature of this type of audit. Yes.

Ms. Yukimura: There were no irregularities in any of the other audits that you did?

Mr. Pasion: There were a couple of them. For example, if you go into the use of County vehicles, there was some noncompliance by the County in its obligation to implement the provisions of HRS 105 as far as the use of government vehicles, wherein people were taking the vehicles home. Part of it is considered compensation and should be subject to payroll taxes by the users as well as the share of the County on their Federal Insurance Contributions Act (FICA) and Medicare taxes.

Ms. Yukimura: So, the answer is...this is the take home care audit you are talking about?

Mr. Pasion: Yes, the use of County vehicles that were used to take home.

Ms. Yukimura: The use of County vehicles?

Mr. Pasion: Right.

Ms. Yukimura: And that one was released without Special Counsel? You did not need Special Counsel?

Mr. Pasion: That is correct.

Ms. Yukimura: So, this is the first one where you have needed legal advice about what to release and what not to release?

Mr. Pasion: That is correct.

Ms. Yukimura: How did you distinguish this one from all from all the rest?

Mr. Pasion: Well, because of the nature of this particular audit.

Ms. Yukimura: And that is?

Mr. Pasion: That is there was some alleged criminal nature of some acts that were...

Ms. Yukimura: But was that not resolved?

Mr. Pasion: I do not know. We will find out when I do a follow-up audit on the Fuel Audit. I will do a follow-up audit on the Fuel Audit.

Ms. Yukimura: I thought you handled and all the people who were involved with handing that issue of allegations, that was settled.

Mr. Pasion: Well, Councilmember Yukimura, we have to do a follow-up audit so that what we uncovered and what we recommended are being followed by the Administration, by the County. So, the follow-up audit will then determine whether it is still ongoing or everything was addressed properly by the County.

Ms. Yukimura: Is it not a process of audits that where there is an allegation, you refer the matter to the proper enforcement officers for evaluation and that is how it gets settled, whether in fact there was an illegal or criminal act? Was that matter not settled already?

Mr. Pasion: Well, to me, that is separate as far as doing what is required of my office as far as getting this final audit report out. My office does not have any enforcement authority.

Ms. Yukimura: No, that is why you...is it not a proper procedure to refer it to a proper investigative authority?

Mr. Pasion: Yes.

Ms. Yukimura: And was that not done? I assume you followed proper procedure on that.

Mr. Pasion: That part of it was referred to governance, which was the County Council.

Ms. Yukimura: We are not an enforcement agency.

Mr. Pasion: Yes you do under 317.

Ms. Yukimura: No, that is not. That is an investigative power, but it is not an enforcement power.

Mr. Pasion: But it is a step toward the enforcement.

Ms. Yukimura: Well, I guess we need to consult some legal authority on that.

Mr. Pasion: Just like that I am doing right now.

Ms. Yukimura: Well, no, but I mean if it comes to the County Council, then we have to do whatever we have to do and if that was your proper procedure, then that was followed?

Mr. Pasion: I am just following procedures.

Ms. Yukimura: Well, it says that when fraud, noncompliance with provisions of laws, regulations, contracts, or grant agreements, or abuse either have occurred or are likely to have occurred, auditors may consult with authorities or legal counsel about whether publicly reporting such information would compromise investigative or legal proceedings. I think there were no legal proceedings, right, that resulted after procedures were followed? Is that not right? Was it not resolved?

Mr. Pasion: That is one of the provisions of the Yellow Book that you are referring to. As far as getting my final audit report, I am also following the provisions of the Yellow Book because otherwise, it will be incomplete. I have to get it out.

Ms. Yukimura: Yes, but I think this is the Section that is most relevant, the others...alright. Well, we will have a discussion. Thank you.

Chair Furfaro: Mr. Kagawa.

Mr. Kagawa: Thank you. Thank you, Ernie. Was this audit performed in-house or did you contract it out?

Mr. Pasion: No, it was not in-house. We used the consultants as investigators.

Mr. Kagawa: So, consultants. Who performed the audit, the work papers?

Mr. Pasion: The work papers were done by...well, the work papers for the interim report was done by Ron Rawls who was a part of my staff.

Mr. Kagawa: Oh, okay. It was done in-house?

Mr. Pasion: Right, and that was to report the findings of the use of purchase gas as well as the credit cards issued to the Transportation Agency and recommendations to correct them, but as far as the rest of the audit, it was held until we got to issue the final report.

Mr. Kagawa: For what years was that audit?

Mr. Pasion: It was in 2010 and 2011.

Mr. Kagawa: 2010 and 2011? Did the office go forward or back to see if it was a problem from the prior years also? Did we go back and...

Mr. Pasion: I would say that it has been a problem because the software that was supposed to monitor the use of purchase gas at the base yards, the system was not functioning. If you go to the Automated Teller Machine (ATM), if you do not have the right number, you do not get any cash out, right? But for the gas code that they were using, it was an old system. You can put 000 and it dispensed gasoline.

Mr. Kagawa: So, basically, for the prior years, it was very easy to steal gas if one wanted to?

Mr. Pasion: I would say, yes.

Mr. Kagawa: But now with that new system, it allowed you folks to catch some irregularities?

Mr. Pasion: Well, we will find that out when we do a follow-up audit.

Mr. Kagawa: Okay. Very well. I do not tend to beat around the bush. So, here is what was happening with me at least. I have been getting a lot of requests from some of your supporters and they are asking me to initiate removal of the Mayor because of the Fuel Audit. I for one, I feel that the

Mayor is highly under paid. I just went through the University of Hawai'i (UH) salaries. There are fifty (50) people that work for the University of Hawai'i that make more than two hundred thousand dollars (\$200,000). I think the Mayor does a lot more than probably most of those fifty (50), what his job entails in running the County of Kaua'i. We do not have a County Manager, but I really think if we are going to spend outside Counsel to focus on the Mayor, I can say at this point, I am not going to support it because I think politics does not belong at least on the Council floor. I think if it is for outside Counsel for something else, then I will consider it, but I think the Mayor's job to run the County to be at every function, I think it entails using a lot more gas than probably he gets from the County. It is a tough job and I think if we needed to set up some internal controls for the Mayor for the future going forward, I think that is the right way to go. To question whether our Mayor was stealing gas, I do not think it is fair. Anyway...

Mr. Pasion: Councilmember, if I may make a comment on what you just said.

Mr. Kagawa: Yes.

Mr. Pasion: This request for a Special Counsel is not for what you are talking about.

Mr. Kagawa: Okay.

Mr. Pasion: This request for Special Counsel is to complete our audit.

Mr. Kagawa: Okay.

Mr. Pasion: I am not talking about the one that you are taking about at all.

Mr. Kagawa: Well, it is just that I bring it up because in recent weeks, I have been getting request from supporters of yours that sit here with these signs in front and they are asking me to initiate removal of the Mayor because he took the Fifth on the questions. Like I said, I think sometimes, we just have to move on from issues that are done with.

Mr. Pasion: They were just exercising their First Amendment.

Mr. Kagawa: Thank you.

Chair Furfaro: Councilmember Yukimura, did you want to respond to that specifically or...

Ms. Yukimura: It is a follow-up.

Chair Furfaro: It is a follow-up?

Ms. Yukimura: Yes.

Chair Furfaro: Go right ahead.

Ms. Yukimura: So, if it is not the issue of corruption, then is it just the privacy issue of redacting what might be private, personal privacy?

Mr. Pasion: I really do not know Councilmember. That is the reason why I am asking for Special Counsel to help me and guide me because I do not know. I do not want to compromise the privacy interests of people that volunteered to provide testimony...compromise losing their jobs.

Ms. Yukimura: But that issue would not be an issue that would trigger a conflict of interest with the County Attorneys. I mean, I think there are people in the County Attorney's Office who can very straight forwardly advise you about privacy issues and so forth.

Mr. Pasion: Objectively...Councilmember, like I said, I would rather request for Special Counsel on this.

Ms. Yukimura: If the privacy issues are the issue, then that did not come up in other audits?

Mr. Pasion: Not to this degree on this one. There were so many that...well, the Council has a copy of the investigation report by the way.

Ms. Yukimura: Maybe it would be helpful for us to review it again. Thank you.

Chair Furfaro: Just for clarification, the copy you referred to was the first review?

Mr. Pasion: Chair, the...

Chair Furfaro: The copy you just referred to was the first Fuel Audit?

Mr. Pasion: Yes.

Chair Furfaro: Thank you. Just for clarification.
Mr. Chock.

Mr. Chock: Thank you. Councilmember Yukimura basically asked the question that I was going to ask, but can you specifically state what it is that is in conflict for our County Attorney to advise you on this matter?

Mr. Pasion: Well, the County Attorney was the one who was advising the alleged user of a credit card that was assigned to a County vehicle, but was being used for a personal car.

Chair Furfaro: Mr. Hooser, you have the floor.

Mr. Hooser: I am trying to get a little more clarity. So, the first initial audit was done and that audit showed alleged improprieties or criminal acts by the Mayor and others and now this is a follow-up audit?

Mr. Pasion: No, it is the...we will do a follow-up audit to find out if the recommendations and what were going on have been corrected. This one is still part of the interim report that was issued to complete that audit.

Mr. Hooser: So, there was the initial audit?

Mr. Pasion: Yes.

Mr. Hooser: And then there is this interim...

Mr. Pasion: No, there was an interim audit that was done and this is the...

Mr. Hooser: So, the first audit was an interim audit?

Mr. Pasion: Right.

Mr. Hooser: And now there is the final audit?

Mr. Pasion: Yes, this one is going to be the...

Mr. Hooser: Which has been completed or which you hope to complete?

Mr. Pasion: Well, it has been completed and I need to have the Special Counsel to go over what is going to be completed to be released to the public, make sure that there are...

Mr. Hooser: Right.

Mr. Pasion: I am just trying to protect the office too that is why.

Mr. Hooser: So, on the final audit, what percentage of the actual work has been done except for this work for the Special Counsel?

Mr. Pasion: It is almost...I would say ninety-five percent (95%) done. Everything is done, it is just trying to put it together and then before it is issued to you and to the public, that it has to be reviewed by a legal person, Special Counsel, to make sure that everything is legal.

Mr. Hooser: Right. So, consider that the initial interim audit...

Mr. Pasion: Okay.

Mr. Hooser: Disclosed very sensitive, contentious, allegations of impropriety, the final audit, does that add addition information? It is new information?

Mr. Pasion: Well, the one that we are going to be issuing were not reported in the interim.

Mr. Hooser: Right. So, is that new information contained inside that?

Mr. Pasion: Yes.

Mr. Hooser: Which may or may not also support or not improprieties? There is additional information that might be controversial or contentious or no?

Mr. Pasion: Well, as far as controversial or whatever, that will be up to the Special Counsel to help me with that.

Mr. Hooser: And that is why I wondering if that is why you need to Counsel because you expect this thing to blow up and be controversial and get all kinds of big people upset. Is that why you need Special Counsel?

Mr. Pasion: The nature of this report that will be coming out, I need some legal assistance to get it out because of its implications, yes.

Mr. Hooser: Okay. So, because of its implications?

Mr. Pasion: Yes.

Mr. Hooser: Because of what the audit may indicate or state or show, you want to...so, it is more than just protecting...okay, never mind. Thank you very much. Thank you.

Chair Furfaro: Okay, I just want to get consistent on the terminology, Ernie, for a minute if I can. The preliminary report that came out was submitted to the Council in what was referred to as a draft. Am I correct?

Mr. Pasion: Well, there was a draft that was issued first before we made it public.

Chair Furfaro: Yes.

Mr. Pasion: Yes.

Chair Furfaro: So, that is the draft that we see. Then there was a request by you to secure Special Counsel and investigators to go the next step of which this Council, including myself, supported for you.

Mr. Pasion: When we initiated the audit, Chair, it was uncovered that there were some alleged irregularities going on.

Chair Furfaro: Understood, but you had come to...

Mr. Pasion: And we said that we do not have the expertise to do investigations.

Chair Furfaro: I understand that.

Mr. Pasion: So, then we came to the Council and requested for the retention...

Chair Furfaro: The curators and the investigators.

Mr. Pasion: Retaining of investigators.

Chair Furfaro: So, the Council went to bat for you on that.

Mr. Pasion: Yes.

Chair Furfaro: Right?

Mr. Pasion: That is correct.

Chair Furfaro: In particular, myself. I went to the Administration to make sure that happened. So, from those special investigators, we now have a redraft of the original preliminary report? Is that what we are saying, and that is the one you want the legal help on?

Mr. Pasion: It is not a redraft. It...

Chair Furfaro: A finalized?

Mr. Pasion: Yes, it is a final. It is the fuel investigation audit report that is going to come out.

Chair Furfaro: So, that is what you want the legal Counsel for?

Mr. Pasion: Yes.

Chair Furfaro: But it is also what I am hearing, and after you do that, then you also want to do a follow-up of a new investigation?

Mr. Pasion: We will do a follow-up of the Fuel Audit that is required of us by the Yellow Book and also by the Charter.

Chair Furfaro: But that will be the third one because we did the draft preliminary, we have the one now you want Special Counsel for, and then you will be asking to have a new Fuel Audit. Is that what I am hearing?

Mr. Pasion: No. I will be doing a follow-up audit of the Fuel Audit that we...

Chair Furfaro: A follow-up of the second draft of the Fuel Audit?

Mr. Pasion: The overall.

Chair Furfaro: Okay. I am just trying to put these in what stages we have.

Mr. Pasion: The overall gas audit.

Chair Furfaro: JoAnn.

Ms. Yukimura: So, the follow-up you are talking about is where you see how many of the recommendations have been followed?

Mr. Pasion: Yes.

Ms. Yukimura: Have you done follow-ups of other audits?

Mr. Pasion: We did follow-up on the energy for the Cost Control Commission and we might have to do a follow-up on that too because I can see that there are some gaps in there.

Ms. Yukimura: Well, what about the other audits that you have done, have you done follow-ups on them?

Mr. Pasion: Well, they will be coming.

Ms. Yukimura: How much time do you allow before you do follow-ups?

Mr. Pasion: Usually two (2) to three (3) years.

Ms. Yukimura: So, you have not even issued the final Fuel Audit, so you are going to wait two (2) or three (3) years and then do a follow-up?

Mr. Pasion: Well, basically, the Fuel Audit was in 2011. So, we could do it. I still have to ascertain it. At this point, I do not know yet.

Ms. Yukimura: Thank you.

Chair Furfaro: Let me clarify something here. The questions I asked of Ernie of the Fuel Audit were because that is what is on the agenda. I want to get clear that we are all using the same terminology. The agenda item here is not about procedural things about other audits. So, I just...

Mr. Pasion: Well, thank you. Thank you, Chair.

Chair Furfaro: I just want to make sure you understand, I was trying to get the clarification because we did get an original book which I recall was the first draft. We did you extra assistance through the law firm of McCorriston Miller Mukai MacKinnon LLP and the investigators. So, this might be actually the second request for some legal and investigative help.

Mr. Pasion: They were not hired as legal Counsel...

Chair Furfaro: Okay, you used...

Mr. Pasion: They were investigators.

Chair Furfaro: Okay, you used the law firm for investigators.

Mr. Pasion: They were the only one that bid for that service.

Chair Furfaro: Got it, but what I want to make sure you understand, I am trying to get some clarity on the terminology we are using; draft, preliminary, and final draft. I just want to make sure we got that and that is all to want to do. I just want to clarify. Mr. Bynum and then Mr. Hooser.

Mr. Bynum: Hi, Ernie. I thought this was pretty straight forward, but now that there is questions, I end up having questions after all. In your written thing you say, "firmly believe the Office of the County Auditor cannot effectively, objectively, and ethically be represented by the County Attorney's Office because the County Attorney and former First Deputy represented and advised some of the officials that had to respond to the audit." Did that entail that the entire County Attorney's Office being recused?

Mr. Pasion: Well, the County Attorney himself and the First Deputy were involved in advising.

Mr. Bynum: We have a whole cadre of County Attorneys. It not uncommon for them to conflict out. My question is has the entire office been recused from this matter?

Mr. Pasion: Well, I would like to say that I would like to have a more objective assistance from Special Counsel because to me, to office is conflicted in this...

Mr. Bynum: The entire office?

Mr. Pasion: Yes, in this particular audit.

Mr. Bynum: Has that determination been made lately or has the office recused themselves?

Mr. Pasion: What was that?

Mr. Bynum: I am just trying to determine, Ernie, if that is your opinion or if there has already been a recusal or something.

Mr. Pasion: That is my opinion as the County Auditor.

Mr. Bynum: Okay. I guess I do not understand why another member of the staff who was not involved in those earlier matters could not effectively provide this. If the whole office was recused, then I would understand that, but if that is not the case and there are just certain Deputies that were involved...it is very common is it not for our Deputies at any firm to compartmentalize and say, "Well, yes, I do not deal with this one because of this conflict, but we have other attorneys to deal with it." I was just confused. I did not know if this statement was an opinion or if the office had already recused, and then have not, but you have clarified that it is an opinion. Thank you.

Chair Furfaro: Mr. Hooser, you have the floor.

Mr. Hooser: My comments can be done after we call the meeting back to order, Chair. I just have some brief comments to make.

Chair Furfaro: Any other questions of the Auditor? Thank you, Ernie.

Mr. Pasion: Thank you.

Chair Furfaro: Mr. Castillo, did you want to...

Mr. Castillo: Something short, Chair.

Chair Furfaro: Okay.

Mr. Castillo: Council Chair and Councilmembers, good evening, Al Castillo, County Attorney. I just want to make note for the people that may be wondering why I am up here. Regarding conflict, the Office of the County Attorney represents all of the agencies in the County of Kaua'i and the lucky thing and in this case, what should be discussed in Executive Session is whether or not there are special circumstances that necessitates Special Counsel. Now, I would like all of you to know that Mona Clark came back from retirement and she is behind me. In terms of being separated from much of this issues, Mona Clark is here, she is presently assigned to the Auditor's Office and to the Finance Department, and she will be able to guide the Council and the County Auditor in matters such as this. I just wanted to let you know. Thank you.

Chair Furfaro: Questions of Al? No?

Mr. Chock: Just clarification, Chair.

Chair Furfaro: Yes.

Mr. Chock: So, Mona Clark is just back on, she has not been a part of any of the Fuel Audits in the past, so she would be a good candidate in your office to be able to provide some legal Counsel as illustrated within the request?

Mr. Castillo: Vice Chair Chock, I can only accurately answer that question by telling you that as far as a conflict of interest situation, there is none. I do not know how much she has paid attention to what has been on television for the past several months. I can tell you that she has been retired for about a year and now she is back. So, she would be a good candidate to serve the County Auditor's Office. Thank you.

Chair Furfaro: Mr. Hooser.

Mr. Hooser: Yes, just briefly for the record. So, did you advise the Mayor to take the Fifth on the question of whether or not fuel was taken inappropriately?

Mr. Castillo: I am not at liberty to waive any confidentiality that I have had with any of my clients.

Mr. Hooser: Okay.

Mr. Castillo: So, I cannot share any such information with you. What I can tell you regarding this matter here is if you look at the agenda

item, it is only regarding the release of information and I feel confidently that Mona Clark is more than capable and willing to guide the County Auditor's Office.

Mr. Hooser: If I may, the reason I think it is compelling to point this out is because, and I agree with you that Mona Clark is capable of doing a good job. I think it is a matter of confidence and circumstances from the Auditor's Office and maybe from the public given the past involvement you had in this issue, in advising the Mayor in a criminal matter. So, it is all convoluted between the Auditor's Office and the Mayor and the Attorney's Office. So, I believe and I do not want to speak for the County Auditor, that one reason that it is being is because he wants confidence in his representation and given that history, there is this lack of confidence.

Mr. Castillo: Well, convoluted, I would disagree because of the fact that we take our job seriously in terms of who we represent and how we separate our cases and how we keep information from each other regarding our respective clients. So, as far as I am concerned, we have a clear understanding in our office as to where the boundaries are. If there is any confusion, that is outside and that is speculation. Thank you.

Mr. Hooser: Thank you, Chair. Thank you.

Chair Furfaro: Any further questions? Mr. Pasion, did you want to respond to that? Excuse me, Al. Ernie, you have the floor.

Mr. Pasion: Councilmembers, Ernie Pasion, County Auditor. I beg to differ with the County Attorney. He said that his office's job is to protect or to represent the different Departments of the County. Well, what happened to me? I had requested for Special Counsel to protect my office three (3) times. I never got any response from him. So, it is in the record. It is part of my case. I just want to say that because he said some things that were not true.

There being no objections, the meeting was called back to order, and proceeded as follows:

Chair Furfaro: Discussion amongst the members, and remember, it is my practice to actually call a roll call before we go into Executive Session. Mr. Kagawa, you have the floor.

Mr. Kagawa: Yes. Again, I am getting all of these highly unusual things happen in my first term. I do have some experience with auditing. I am an Accounting major and I had four (4) years working with a CPA in O'ahu, Gerald Oshugima and we did have some government audits, some with the State, some with the County, and I know how government audits are done. I do not do performance audits, but generally, auditing is planning, preparing, and reporting any irregularities accordance with, in this case, government accounting standards. I have never in my time working for the CPA, felt the need to have an attorney to oversee my work. I think our job is to do our investigating and report whatever we find. If it hurts some individuals or their feelings or criminally have implications, it is what it is. I am not here to judge the audit that Mr. Pasion did, but I think his staff prepared the audits in accordance with government auditing standards and I do not think there is really...I cannot see the need to have an attorney at five hundred dollars (\$500) and hour as we heard previously, to oversee their work. You are going to have an attorney that does not know anything about auditing and is

going to spend time learning and reviewing the County Fuel Audit. I mean, the time that he is learning, he is going to be billing us. I think we have Mona working for the County. We are already paying her salary, let us give her a chance and I think it is incumbent upon the attorneys to know when they have a concern and Mr. Pasion has raised his concern. He does not want certain individuals highly involved in the Fuel Audit case, such as Mr. Castillo, get involved or in the way of directing Ms. Clark in what she does. I hope that we can actually satisfy two (2) birds with one (1) stone and give Ms. Clark a chance to help Mr. Pasion give him the fair review that he wants. Like I said, I know his staff, I knew Mr. Rawls a little bit, and I have high confidence in the work that they have done. I think the audit is what it is and some people have suffered through it, but I just hope that we can move forward, we can get the audit out, and we can see what it is. I think the Judge already partly decided on some of the case, but it is what it is and people need to correct their actions if they show up in not god standing with an audit. They just need to make their corrections and if they are really doing a lot of highly unusual criminal activity, then they need to be prosecuted. Thank you.

Chair Furfaro:

Further discussion? Mr. Bynum.

Mr. Bynum: I guess we get to talk about extraordinary things several times today because you are correct. It is not just your first term. I said earlier, extraordinary things are happening around all of these lawsuits and all of this rhetoric that I have not seen in the twelve (12) or thirteen (13) I have been here. Like this item, I thought we just normally we just go into Executive Session and have the discussion. Now, we have had the whole discussion right here on the floor.

Ms. Yukimura:

Not the whole.

Mr. Bynum: Almost. We know what Mr. Passion's position is. He says this is his opinion that he cannot be represented. We know what the County Attorney's position is, that clearly, he is not going to have the attorneys that Mr. Pasion is uncomfortable with working directly with this, but there is a whole bunch of other attorneys there too. You do not start with the assumption that something is nefarious, at least I do not. I start with the assumption that people work in their roles with integrity. Now, I know Mona Clark that got brought up there, I have seen the work she has done since prior to Al Castillo being the guy. She is like this solid contract person that all of our people really, really appreciated and when she retired I was sad because I have seen the product of her good work, but even if I had not she is an attorney. She is a professional. We are going to assume that she is going to act like a professional just like I assume those of us around this table do. Then if one of us does not, we call each other on it, right? So, I do not even know why we are going to go into Executive Session. I know what my position is. There are plenty of County Attorney who can do this role and the County Attorney has already given his position. So, it is unusual, unusual things are happening around here, but these things should not get played out on the Council floor and testimony going back and forth. Again, I do not know what to do about it, but I do not know what this is happening so much over the last few months.

Chair Furfaro:

Mr. Hooser.

Mr. Hooser: Yes, thank you, Chair. I think actually, the fact that this is happening so much over the past few months is indicative of the

situation we are in with the County Attorney's Office. So, I think that is multiple symptoms that there is issues with the County Attorney's Office and I differ from my colleague to say that I think this is a good discussion to have. I asked my initial questions because it was not clear, I do not think to the public, why we were going into Executive Session. So, it needs to be clear that we are talking about a County audit of the gas and serious allegations were made about our Chief Executive, the Mayor, and whether it was criminal or just bad judgment or what, it is a very hot, volatile topic in our community and it has many potential implications. So, it does not surprise me given the history, given the circumstances, given the relationship with the County Attorney's and the County Auditor's Office, that he would come and request outside Counsel. It does not surprise me one bit. I think if I was in a similar situation and handed my file, a hot topic that implicated or possibly implicated or was politically hot, I would want legal advice too. Given the history of the office, I would want outside Counsel too. No reflection on the new Deputy Attorneys that may or may not provide that advice, but I think it is a perfectly reasonable request to make, number one, given the circumstances. Also, I want to say that even though I know my other colleague did not mean to imply this, but half the people in the County are under paid and if being under paid does not justify taking advantage of the system whether it is taking home paper, paper clips, pens, or gasoline. This is a serious issue. I think we should treat it with the seriousness that it deserves and if we are going to make a mistake, we make a mistake of being more transparent and more forthright so the people of our County do not think that we are sweeping something under the rug or trying to somehow not be transparent. I just think it is a reasonable request and we can have further discussion in Executive Session. Thank you.

Chair Furfaro:

Mr. Chock.

Mr. Chock: Thank you, Chair. I would agree. I think that is just a sign of the time that the request is that there is more transparency and that is why we have people every day here asking us to share things that we end up doing in Executive Session. So, whatever we can get away with happens on the floor in this discussion. So, I appreciate it. I am still really confused about is it about privacy, is it about his opinion, is it convoluted because the County Attorney advised others and now they are all conflicted, is it just the County Attorney or the First Deputy? The decision I need to make is whether or not there is a true source of conflict there and that is what I am hoping to get out of the Executive Session, but for my standpoint especially since we have been here every day getting pounded because of legal Counsel or Special Counsel. It is like why are you folks hiring Special Counsel constantly? Well, this might be a small way to say, I do not think we need Special Counsel at this time around because it is a very broad request. It is what can you share in this document or not. That is it. So, that is the direction I am headed now, but I am willing to talk more about it and hear more about what the details are. Thank you, Chair.

Chair Furfaro: So, on that note, I would like to actually call for a vote to go into Executive Session as again, has been my practice as Chair. So, could I have a roll call vote, please?

The motion to convene in Executive Session for ES-714 was then put, and carried by the following vote:

FOR EXECUTIVE SESSION:

Bynum, Chock, Hooser, Kagawa
Yukimura, Furfaro

TOTAL – 6,

AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Rapozo	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Six (6) ayes.

Chair Furfaro: Six (6) ayes, and I would like to say if we can be in the chambers by ten (10) minutes past 7:00 p.m. or sooner, but some of us need to take a break.

There being no objections, the Council recessed at 7:03 p.m.

There being no objections, the meeting was called back to order at 7:48 p.m., and proceeded as follows:

Chair Furfaro: We are back from our Executive Session. Mona, I have you here at the table and I think there are some questions we want to post to you from various Councilmembers. JoAnn.

There being no objections, the rules were suspended.

Ms. Yukimura: Yes, thank you. In examining all of the circumstances of this situation, Mona, I can understand the Auditor's reluctance to consult with Al Castillo, the County Attorney, but I think for us the question is whether there are other attorneys with the office who can properly service the Auditor's needs and avoid any conflict of interest. So, I want to ask you a couple of questions and one is, should the Council determine not to authorize Special Counsel at this time and if the job were to be given to you to support and work with the County Attorney, how would keep the independence necessary from the County Attorney for whom both the Auditor and the public perceive a conflict?

Chair Furfaro: Before you answer that, procedurally I would like the Clerk to read the item that we are discussing here. So, if you could read C 2014-94.

C 2014-94 Communication (03/20/2014) from the County Attorney, requesting authorization to expend funds up to \$10,000 to retain Special Counsel to represent the Office of the County Auditor regarding the release of the Fuel Audit, and related matters.

Chair Furfaro: Go ahead if you are still okay with her question, please go ahead and respond.

MONA CLARK, Deputy County Attorney: Well, I think in this particular situation, I would maintain strictly the confidentiality of my client, the Auditor's Office, and not consult with anybody else in the office. I think that would address the concerns about any conflict and assure that I was not drawn in a conflict situation. If somehow the situation morphed over time and new facts or circumstances were presented to me that I had been unaware of that I felt created some sort of conflict, then I would call of Office of Disciplinary Counsel (ODC) immediately and run by the circumstances that had developed and get an opinion from an outside party, which is there for that specific purpose to determine whether there was in fact a conflict. If there was any sort of conflict, I would first inform my client, but then I would believe our office would submit a request for Special

Counsel. At this point, I do not see that any sort of conflict exists because the type of activity that is being discussed here, redacting to protect the names, protecting the County from any sort of slanderous allegations that something slanderous has been said, that type of activity is pretty straight forward and I do not perceive any type of conflict at all with my ability to do that. I have been gone for the last eight (8) or nine (9) months and so I have not been involved in anything that has gone on during that time period. I could not tell you exactly what has gone on because I have not been tracking it. So, I do not know. I have not been involved in anything obviously. So, I feel very confident that I could keep myself separate from the rest of the people in the office so that no conflict occurs as far as people who have previously given advice on the subject matter of the audit, that I did not have contact with them or influence by them.

Ms. Yukimura: Now, you said you have been gone eight (8) to nine (9) months, but I believe the investigation was done before that. So, I just want to be clear that you did not have any role whatsoever or have any discussions whatsoever with the County Attorney or anyone associated form the County Attorney's Office with the Fuel Audit.

Ms. Clark: I was aware that a Fuel Audit had occurred obviously. I think that was pretty common knowledge.

Ms. Yukimura: That was.

Ms. Clark: But I was not involved in the activities about the Fuel Audit.

Ms. Yukimura: And you were not involved in any discussions about the Fuel Audit?

Ms. Clark: Beyond just knowing that a Fuel Audit had occurred and basic allegations, I was aware that there were allegations that have been discussed in this Council, but that was pretty much my knowledge.

Ms. Yukimura: So, you were aware of things that were publicly known?

Ms. Clark: I think I was aware of what was publicly known.

Ms. Yukimura: Okay. Thank you.

Chair Furfaro: Mr. Hooser.

Mr. Hooser: Thank you. It has been a long day for all of us. In the prior discussion that we had before we went into Executive Session, we talked and I had asked questions and others too about potential improprieties that were passed and it is possible if you were consulting and going through it, you might discover other improprieties and whether they are illegal or just unethical or just improprieties, in that situation, what would you do? What is your responsibility?

Ms. Clark: If I discovered that there were improprieties?

Mr. Hooser: Right. I mean, if the audit pointed out improprieties.

Ms. Clark: Well, I think it depends on what sort of improprieties you are talking about because I think any audit is going to highlight problems that have occurred.

Mr. Hooser: Like theft. We will cut to the chase here, stealing.

Ms. Clark: Right. If you are talking about criminal activity, I believe that there would be a progression of referrals. I think the first thing would be the referral to the Attorney General's Office for that type of activity.

Mr. Hooser: Yes.

Ms. Clark: That is pretty much what would happen, I guess.

Mr. Hooser: If the decision was to ask you to work with the County Auditor's Office, you would...I guess the way the process would work is you would meet with the County Auditor and sit down to determine exactly what he would hope to accomplish with your services, what he needs. Is that correct?

Ms. Clark: Well, I think we would talk. It is my understanding from being here, that a lot of it is going to be redacting to protect people's privacy. Obviously, we would have to talk through whatever issues he saw and find out what they were and go from there.

Mr. Hooser: So, in those discussions, you would then be able to determine the scope-of-work if you would, then the depth of knowledge and experience needed to provide the services, and then determine whether you are the right person for the job, I suppose?

Ms. Clark: Right. You will always want to have a level of competence that you either currently have or you can develop so that you can deal with the issues. If I felt that it was something that is easily researched or even was difficult to research, I would feel competent to do that. Though if some unusual set of circumstances came up that was totally beyond my expertise, I would seek assistance of some sort. I do not know whether that would be in the form of a training course that would be applicable or a Continuing Legal Education (CLE), a continuing education course. I do not know what would be required. A lot of times, one can educate yourself. As attorneys, we spend a lots of time researching items. So, that would be the first course of action.

Mr. Hooser: Thank you. Thank you, Chair.

Chair Furfaro: Anyone else for first questions before JoAnn has a second question? No? JoAnn, you have the floor.

Ms. Yukimura: If the Council were to approve Special Counsel, it still has to go through your office, does it not, through the Procurement Code process?

Ms. Clark: Yes.

Ms. Yukimura: So, that your office would work with the Auditor on what the scope-of-work would be or what the needs are and then you already have a list which has been qualified for whatever work is needed or wanted, and your office would choose with the Auditor, from the list? Is that how it works?

Ms. Clark: I think that you have submission by, I think it is July 1st every year for professional credentials related to various items. So, you would have all of these resumes from firms that would be ranked and evaluated and then one chosen. Frequently, the ranking occurs just within our office rather than bringing in the Auditor's Office to rank them in any way.

Ms. Yukimura: Okay. So, the selection is actually done by the County Attorney's Office?

Ms. Clark: That is correct.

Ms. Yukimura: Even if Special Counsel is involved?

Ms. Clark: That is right.

Ms. Yukimura: And it definitely requires a scope-of-work?

Ms. Clark: You would have a scope-of-work attached to the contract.

Ms. Yukimura: Alright. Thank you.

Chair Furfaro: First of all, welcome back.

Ms. Clark: Thank you.

Chair Furfaro: The way these questions are going and directed towards you and so forth, this would really be that you would be encapsulated as the attorney for the Auditor and not the Counsel?

Ms. Clark: That is correct. I would be working for the Auditor's Office.

Chair Furfaro: Other questions? Mr. Hooser.

Mr. Hooser: Just to clarify. So, the Auditor would be your client?

Ms. Clark: That is correct.

Mr. Hooser: And that is where the client-attorney privilege would be between you and the Auditor, and you would not share information with the Council or the Administration?

Ms. Clark: That is correct.

Mr. Hooser: It would just be between the two (2) of you?

Ms. Clark: That is right.

Mr. Hooser: Okay. Thank you.

Chair Furfaro: Vice Chair.

Mr. Chock: Thank you. So, it seems to me the discussion is moving towards the option to connect you with the Auditor to see that their needs are met at the office. In the event of working through the concerns and what to release or not, if there was a conflict that came up, what process would you go through at that point to address the conflict?

Ms. Clark: If I felt that a conflict had arisen, I would go back through and look at the professional rules of conduct that would rule in that case. Generally, the conflict of interest rules would be the one that come first to mind. Then I would call the Office of Disciplinary Counsel. They are very open to people calling them or to attorneys calling them and seeking advice. I would set out the circumstances that led me to believe that a conflict of interest had arisen. I would then have a conversation with the person who was working for ODC and they would ask me questions and I would provide responses and they would determine based on what I told them, whether a conflict existed. If I was told that a conflict existed, I would not want to handle the case or the matter any further because that would compromise me professionally.

Mr. Chock: Thank you.

Chair Furfaro: JoAnn.

Ms. Yukimura: So, if you were to get an opinion from Disciplinary Counsel that there was a conflict and you followed the professional rules, it would be at that time where there would be made a request for Special Counsel then?

Ms. Clark: That is right. At that point, a request would come from our office to this body requesting that Special Counsel be appointed.

Ms. Yukimura: Okay. Thank you.

Chair Furfaro: Any more questions? None? Thank you very much. Thank you.

There being no objections, the meeting was called back to order, and proceeded as follows:

Chair Furfaro: Mr. Kagawa.

Mr. Kagawa: Can I make a motion?

Chair Furfaro: You can make a motion. Excuse me.
Mr. Pasion, you want to speak? Come right up.

There being no objections, the rules were suspended.

Mr. Pasion: For the record, Ernesto G. Pasion, County Auditor. As you know, all contracts are reviewed by the Office of the County Attorney and when we submitted our contract for this particular project which has the Furlough Audit Report completion as well as the Fuel Audit Investigation Report, it showed that we needed Special Counsel and their office approved it for form and legality and never questioned it. So, we can expect it that we would be able to get Special Counsel.

Chair Furfaro: Scott.

Mr. Pasion: Can you give them the copies, Scott?

Ms. Yukimura: What is the date of that, please?

Mr. Pasion: January 2013. This in on Contract No. 9039, that they approved for form and legality, that reflected the fact that we needed Special Counsel, and they signed off on this contract. Now, after the fact that they did this, they want to handle it themselves? They did not bring it to our attention.

Chair Furfaro: JoAnn.

Ms. Yukimura: The following work shall be completed...this is scope-of-work attached to what?

Mr. Pasion: This is the scope-of-work that was attached to our contract with PKF Hawai'i, LLP, for them to do the completion of the Furlough Audit Report and then also the Fuel Audit Investigation Report, to be a public report.

Ms. Yukimura: Okay. So, you hired or procured CPA firm?

Mr. Pasion: Yes.

Ms. Yukimura: To do a Fuel Audit Investigation Report?

Mr. Pasion: To do a...

Ms. Yukimura: Now, is this the one we are talking about?

Mr. Pasion: Yes, it is. No, not that one. The one that had to be issued by our office.

Ms. Yukimura: I do not get it. This was issued by your office, was it not?

Mr. Pasion: Yes, that was the interim report.

Ms. Yukimura: Oh, okay. Anyway, they approved as to form and legality, but that is not approving Special Counsel.

Mr. Pasion: But they were made aware of it and if they had concerns, they would have just it back to me and said, "We can handle this ourselves."

Ms. Yukimura: Well, I think perhaps they knew that you would still have to go through the Special Counsel request process.

Mr. Pasion: Obviously.

Ms. Yukimura: So, "incorporate changes to the report as required by Special Counsel and/or the Officer-in-Charge." Who is the Officer-in-Charge?

Mr. Pasion: I am.

Ms. Yukimura: So, they saw that this thing could be implemented without Special Counsel too? I mean, that is an option, right?

Chair Furfaro: Mr. Kagawa.

Mr. Pasion: Well...

Chair Furfaro: Oh...

Mr. Pasion: Go ahead.

Mr. Kagawa: In following-up with Councilmember Yukimura, it says "and/or," so it is either or as I read it, or both. It could be Special Counsel, could be you, Ernie, or it could be the both of you. That is what "and/or" means to me.

Mr. Pasion: But it does not say "Special Counsel or," it says "and/or."

Mr. Kagawa: And...

Mr. Pasion: So, it is...

Mr. Kagawa: No, but what I am saying is that it could mean you and the Special Counsel or it would be the Special Counsel by himself or it could be you by yourself.

Mr. Pasion: But the fact that this is a legal matter, I am not an attorney like Mona or...

Mr. Kagawa: Well, Ernie, I think my question is are you willing? Mona has said she will not deal with the people who I think we all believe, are in conflict, Al, First Deputy, or she said no one else in the office. She is just willing to...at the onset, try and work with you, see if she can satisfy your needs as meant by this language, and if you or her find yourselves in a predicament that you cannot work together, there is still problems, at that point I guess maybe one of you could come back to us. I think, give her a chance is my recommendation. The Special Counsels that I have seen in recent months, you are not on the Council and see what I am seeing. I am not happy with ninety percent (90%) of the Special Counsel work that I have seen in recent months, ninety percent (90%). There is one (1) attorney in particular that I am happy with and I cannot say that about anyone else so far. So, saying that you want a Special Counsel to make things better I think, is not a guarantee. I would try to work with Mona first and if you are not

happy or if you feel that she is not being I guess the private attorney that you want in this case, then you can come back, but I say, please, Ernie, try and give her a chance and see if you can work together because like I said, the Special Counsels, all I know is that the bills come in and your ten thousand dollars (\$10,000) will be probably gone in two (2) weeks or one (1) week and you will be coming back to us and we will not be happy if we end up in the hundreds of thousands because the purpose of your audit to save money will actually cost us more money in the end. She is on staff. She works for us. She is on our payroll. She is willing to be independent. Can you at least try and work with her on the onset and if there are still problems, then come back to us?

Mr. Pasion: Well, Councilmember Kagawa, that is the reason why when I requested the County Attorney to hire the law firm McCorriston because they were involved in this whole thing so they knew about the whole situation. So, it should not take that otherwise we are going to reinvent the wheel again on this thing by going with somebody else.

Mr. Kagawa: So, you have already selected McCorriston?

Mr. Pasion: No, no. McCorriston was involved in the investigation. So, I requested the County Attorney to possible request that they will be involved in this project.

Mr. Kagawa: Did they indicate to you that ten thousand dollars (\$10,000) will take care of their whole needs?

Mr. Pasion: No, I did not talk to them. I was going through the protocol of going through the County Attorney.

Mr. Kagawa: How did you get ten thousand dollars (\$10,000)?

Mr. Pasion: Ten thousand dollars (\$10,000) was the one that was...oh, ten thousand dollars (\$10,000) was...

Mr. Kagawa: The request.

Mr. Pasion: It was the request of the County Attorney, not me.

Mr. Kagawa: They requested ten thousand dollars (\$10,000)?

Mr. Pasion: Yes, that is right.

Mr. Kagawa: So, I am still not comfortable approving ten thousand dollars (\$10,000), allowing you to proceed with hiring McCorriston, and not knowing what the end bill will be. I need to know how much are we going to end up...what is your estimate for McCorriston to represent you throughout this Fuel Audit ending?

Mr. Pasion: Well, the fact that they were involved...

Mr. Kagawa: I am not going to give you an open check, Ernie.

Mr. Pasion: Well, the fact that they were involved to me, would shorten the time compared to somebody else going into the whole thing again.

Mr. Kagawa: But you are still not telling me. How much will it cost in the end? Do you have an estimate?

Mr. Pasion: No, I do not. I wish I was an attorney, but I am not an attorney.

Mr. Kagawa: Well, you need to get that figure because I am not approving a blank check, Ernie. I am sorry.

Chair Furfaro: Mr. Hooser.

Mr. Hooser: Yes, Mr. Pasion. Part of the challenge I think, and I said earlier that I thought it was a reasonable request given the situation in given the circumstances and history with the County Attorney's Office and I still believe it is a reasonable request. However, looking at the County Charter and looking under the reasons, typically, outside Counsel would be hired, looking at that and also trying to understand exactly what this outside Counsel would do, I do not believe what exactly that person would do. Now you mentioned McCorriston. It is my understanding that there is a procurement process that is has to go through and whether McCorriston was hired or not, I am not even sure about that. So, I think what I am thinking is that if we have a fresh deputy County Attorney, which we have, who has a lot of experience and will set up a wall between Mr. Castillo and the rest of the staff, then she could meet with you and evaluate the needs at the minimum. Just say, "Okay, what do we need?" Then either she can fulfill that need or she could come to the conclusion that gee, this is going to take all of this time. I have to relearn all of this. McCorriston already knows it. It might be more efficient, a better...so we can get somewhat of a better evaluation of what you needs are and what legal requirements those are, but right now, we get that you have to have somebody review this. That is loud and clear, but in terms of what the reviewer consists of and how long it would take is not clear. So, I think the direction I am leaning towards is that you work with this Deputy who again, has experience, has been out of the office for a while, and could at the minimum, evaluate what your needs are and hopefully fulfill those needs, but if not, make other recommendations if you need specialized law advice that we cannot offer, the County cannot offer, or if it would be just much more efficient as you seem to think, to hire a firm that has been involved. Do you have any comments on that? I am supposed to ask you a question, but that is not really a question.

Mr. Pasion: Well, I was advised that there could be a Chinese firewall to prevent any pollution between the Deputy and the County Attorney or things like that. So, I do not know how it works. So, I do not know what a Chinese firewall is.

Mr. Hooser: I think if I may, that it is not uncommon in large firms especially and certainly in the County here, that happens. I think a certain amount of trust will be required obviously and your ability to work together

with her, I think shows some good faith and trust initially and then if you are proven wrong, then we could go to Plan B maybe.

Mr. Pasion: Okay.

Mr. Hooser: That would be my suggestion. Thank you.
Thank you, Chair.

Chair Furfaro: Other members? JoAnn.

Ms. Yukimura: So, Ernie, the sheet that you have given us as a scope-of-work says, "the consultant's tasks shall include, but not be limited to" and in this case it is PKF Hawai'i, LLP as the consultant.

Mr. Pasion: Yes.

Ms. Yukimura: In collaboration Kiamalu Consulting and Investigations Agency LLC, write a report from the Fuel Audit Investigations Report that is acceptable for public release. So, I mean, I think earlier before we went into Executive Session you told Councilmember Kagawa, "Oh, it is not about potential criminal activity," but this does sound like it is because it is related to the investigation and you are hiring the services through the consultant. You are hiring the services of an Investigations Agency.

Mr. Pasion: That is with PKF Hawai'i, LLP, not me hiring them.

Ms. Yukimura: Well, yes, but I mean I think they have the responsibility to be legally correct and they must have their legal Counsel that advises them on...because that is the scope-of-work. That is their performance requirement. A report that is acceptable for public release. So, to me, you already, through this investigative agency, you have services already or you should. If you do not, then working with Mona to understand that would seem to be logical, but I also want to just encourage you to, in good faith, work as far as you can. What the Chinese wall means to me, is that Mona will act in her professional capacity and without consulting with others in her office, will work to serve you as her client.

Mr. Pasion: What kind of assurance would I have on that one?

Ms. Yukimura: You will have the assurance of working with her and you will be able to tell how professional she is. That is your first interface to know.

Chair Furfaro: Okay. You were about to make a motion?

There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Kagawa moved to receive C 2014-94 for the record, seconded by Mr. Bynum.

Chair Furfaro: Discussion now. Mr. Bynum.

Mr. Bynum: Ernie was our Deputy County Clerk here. These issues of confidentiality, professionalism, and whatever you want to call it, boundaries or Chinese walls or whatever, are things that we exercise, our staff here exercises every day. Any new staff person that comes here gets training. I got training about this when I came here. This is the level of professionalism that we exhibit everywhere because if I am mad at one of the staff, I am not going to trust the other staff? I do not believe that Mr. Pasion has any reason whatsoever, I could have asked him this, to question the integrity of Ms. Clark. To do that blanket because of who here boss is and you have difficulties there, it is just not acceptable to me and professional conduct here. A part of me wants to just say, "Okay, fine. Let us just give him Special Counsel," but that is like saying, "Well, it does not meet the criteria." The criteria we have here, there is a simple criteria. Is there a conflict? Is there a reason that we would expend these County funds above and beyond? I guess that fiduciary responsibility is important too because I was between appearances and what I think is the right thing to do. Well, I am not going to go with appearances. I am going to go with what I think is the right thing to do, which is at this point, say, "Work with the professionals we have." The office has not been recused. If we run into a problem, I have faith in the professionalism of the individuals in this County to do the right thing as outlined by Ms. Clark in her answers to her questions. So, circumstances may change, but at this point, I do not think Special Counsel is warranted.

Chair Furfaro:

Further discussion? Mr. Kagawa.

Mr. Kagawa: Thank you, Chair. I really believe what we are experiencing is partly due to a growing pains of having the County Auditor's Office created. I think it is commendable that Mr. Pasion has done the Fuel Audit investigation Report. It has uncovered some irregularities or improprieties that were going on. I for one, do not believe that our Mayor is a thief. I have known him for many years. I think he is of the highest integrity. He is the last person that I would think would steal gas for his personal self, but corrections need to be done. Sometimes we follow what was done in the past and I am glad that Mr. Pasion has basically corrected the way employees treat gas and I think his auditing has led to having accountability at the base yards. Who knows how much gas has been missing and I think he is here with a legitimate request that he personally feels is right. It is in the language here. I find it peculiar that line 3 would include that though. Like I said, I have done audits before working for a CPA firm with government audits. We have never had our work reviewed by an attorney to see what we release or not. When you do an audit, whatever you uncover, it comes out. It is what it is. If people are shown to have done actions that are not proper, then again, it is what it is. I think Mr. Pasion's report should be reviewed by himself and if he has some kind of legal question, it should go to the County Attorney. I think what has transpired in the months is he has no trust in some of the attorneys there in some of the advice that they have given, but we have Mona that has stepped up, is willing to try and help up resolve this situation without having to spend Special Counsel moneys that I do not know what it is going to amount to. If I knew that it was just ten thousand dollars (\$10,000) and that would be the end of it, I would approve it right now. I would give Mr. Pasion what he wants being the Auditor, feeling proud of his audit in what they are releasing, but I have a feeling that this ten thousand dollars (\$10,000) is just the initial request and I am concerned that we will be adding one (1) or two (2) more zeroes to that number when it ends. So, I will not be supporting his request today, but I do remain open to hearing back from both of you in the future because I believe that he does have a legitimate request, but hopefully, he can work it out with Ms. Clark. Thank you.

Chair Furfaro:

Further discussion? Mr. Hooser.

Mr. Hooser: Yes, I will be supporting the motion to receive and believe I think, as Councilmember Chock has mentioned earlier, that at the end of the day it is about transparency and we need to take this issue of the Fuel Audit and put it to bed, put it out, get it finalized, have it reviewed, then distributed to the public, and let the cards fall where they may. People can respond to it. So, we need to deal with this and the underlying issues again, I believe is a valid one in terms of the request by Mr. Pasion that the lack of faith, confidence, and the distrust. This is a serious issue, is how do we function? You see the difficulty of his office trying to function without confidence and that is the underlying issue that we have seen to be a recurring theme that we need to deal with as a County, not just as a Council. Thank you, Chair, for the opportunity to speak and for running such a long, good meeting.

Chair Furfaro:

Thank you. Anyone else? JoAnn.

Ms. Yukimura: Yes. I understand Mr. Pasion's distrust of Mr. Castillo and I believe his intention is to get this Fuel Audit completed, which as Mr. Kagawa has said, is something that has had already a positive impact on the County. I do believe that there are resources to meet his need and I have confidence in Mona Clark, 1) that she will be a consummate professional, 2) that she will keep her independence and therefore not be in conflict and that if a conflict should emerge, she will be the first to acknowledge that and seek Special Counsel. So, I would really request of our Auditor that he work with that schematic and I hope that he will really get the services that he needs.

Chair Furfaro:

Vice Chair.

Mr. Chock: Thank you, Chair. I just wanted to say that I think this is a good intermediary approach that as stewards of the County can take to mitigate not only the needs of the Auditor's Office, but also of the County's budget and unforeseen costs. So, I am supportive of receiving this item and I look forward to hearing an update from both parties involved and in releasing this Fuel Audit Report. I am looking forward to seeing that released. Thank you.

Chair Furfaro: On that note, I would like make this motion to receive a roll call vote, if I may, please.

The motion to receive C 2014-94 for the record, was then put, and carried by the following vote:

FOR RECEIPT:	Bynum, Chock, Hooser, Kagawa,	
	Yukimura, Furfaro	TOTAL – 6,
AGAINST RECEIPT:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Rapozo	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa:

Six (6) ayes.

Chair Furfaro: Thank you. On that note and before we end the night, I would like to remind everybody that tomorrow we start with the Departmental Budgets, 9:00 a.m. We go into a pretty demanding period for us. We start at 9:00 a.m. with the Chair's overview as well as an opportunity to hear from

the Mayor and the Administration from the Mayor's Office, Life's Choices, and also at some point in time I want to set the tone that at the beginning of each session, that is when I will be taking public testimony, okay, and that has been my past practice. I also would like to ask for your approval that earlier today I had announced the press release of our Deputy County Clerk, Jade, actually being selected as a finalist in the Pacific Business News' "Women Who Means Business: Businesswoman of the Year" awards as a nomination. Your work is always appreciated, but I would like to ask if I may enter the press release into the record of today's meeting.

The referenced news press release was entered into the record.

ADJOURNMENT.

There being no further business, the Council Meeting adjourned at 8:29 p.m.

Respectfully submitted,



JADE K. FOUNTAIN-TANIGAWA
Deputy County Clerk

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